

# **The ‘Global Land Rush’, Local Land Rights and Power Relations: European Forestry Investments in Tanzania**

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Dissertation  
**Martina Locher**

Zürich, 2015



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## **Dissertation**

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**Picture on second cover page:** Sign-board of forestry company in Kilolo District; photo by M. Locher (2011)





## Summary

In recent years, rural areas in the Global South have experienced increased demand for land by investors. Private companies acquire farmland in order to make a profit from various agricultural commodities including agrofuel and forestry products. Large-scale land deals and related investments provoke numerous hopes and concerns regarding rural development and local people. Yet established knowledge about the ‘global land rush’ – also referred to as ‘land grabbing’ with negative connotations – is still limited.

This **thesis aims** to contribute to a differentiated picture of the global land rush by asking four main questions:

1. *How do land acquisition processes take place?*
2. *What are the implications of land deals and related investments for local livelihoods?*
3. *How do local people perceive foreign land investments?*
4. *How are data regarding the global land rush (re)produced and reported?*

The thesis addresses these questions through a case study analysis of two forestry investments and through a detailed review of reports and data compilations related to the land deal situation in Tanzania. Four Research Papers provide insights into different aspects of these questions. They analyse the land deal processes and related power issues, the recognition and violation of customary land rights, the implications of the investments and local people’s perceptions (Papers I and II). They also discuss the relevance of recognising plural legal orders of land in international guidelines on tenure and responsible investment (Paper III) and the challenges of data collection as well as flawed research methods in representing the land deal situation in Tanzania (Paper IV).

The study employed a unique combination of conceptual approaches: a critical livelihoods perspective, a property concept and legal pluralism perspective, access theory and a bargaining power model. This enabled me to (i) focus on local inhabitants’ agency and social differentiation among them; (ii) comprehend property and access to land in its full complexity; and (iii) analyse power relations from different angles. The papers are based on empirical data collected in fieldwork between 2009 and 2013, and analysis of legal documents and reports about and from investors. I conducted qualitative interviews with villagers, local, regional and national government officials, and representatives of companies, civil society organisations and the academia. Further primary data were generated through participatory observation as well as group discussions and participatory mapping exercises with affected people.

The thesis (see Paper IV) illustrates that data collection regarding the land deal situation in Tanzania is a challenge because of central government’s limited overview of land deals. But also **flawed research methods** contribute to the problem. Several publications present their data sources in aggregated or incomplete ways. Further, data are often derived from media and investors’ websites, which in many cases proved unreliable. The flaws result in the dissemination of inaccurate information, such as the reporting of land deals that have never materialised. Overall, they lead to a blurred picture of the land deal situation in Tanzania, and arguably elsewhere too.

The case studies focus on two European companies that have acquired both individual and communal land (see Papers I-III). They illustrate that land deals in Tanzania involve lengthy and complex **procedures**, which are influenced by a combination of ‘power strands’, namely:

- Land law, which in Tanzania’s case is comparatively favourable in terms of respecting customary land rights and requiring local people’s approval to land deals;
- Unequal knowledge about land rights among local people and compared to investors;
- (Access to) influential government authorities;
- National development discourses, which in Tanzania and many other countries legitimise and encourage land deals;

- Local communities' potential resistance through the threat (or the actual carrying-out) of destructive actions such as burning forestry plantations;
- Unequal resources and alternatives to the deal: the financial resources mobilised by the investors and local people's lack of alternative livelihoods are crucial in bargaining situations.

Government officials and politicians at local, district and regional levels play an important intermediary role in the villagers' decision-making, the identification and recognition of local land rights, and the settlement of compensation. The way the authorities fulfil their roles – whether they support the local population or whether they pursue their own interests or national development goals – substantially influences the outcomes of the deals.

The study demonstrates that the recognition of customary rights is a delicate undertaking. Local claims include overlapping and sometimes competing bundles of rights. Further, local elites – in Tanzania, these include elected representatives – are not always aware of all the flexible tenure arrangements in their constituency and can thus not fully back them towards outsiders. Overall, it is virtually impossible to guarantee the full protection of existing land rights. The examined international guidelines on tenure and responsible investment do not address this complexity of plural land orders in a fully satisfactory manner.

Local inhabitants benefit and suffer in different ways from positive and negative **implications** of the investments. The companies provided compensation; one in the form of infrastructure, the other in cash. They offered labour options that were generally desired by local people, but under rather disappointing conditions in terms of salary, working hours and job security. Yet some of the poorer households welcomed them as an additional income source. Both land deals resulted in many villagers losing land against their will. This happened particularly – but not only – in areas where the resettlements under the government's villagization policy in the mid 1970s had led to complex local tenure arrangements. In many cases, the compensation was inadequate. In the worst cases, the food security of the affected households actually decreased. It is not possible to weigh up the positive and negative implications, as they do not necessarily affect the same people.

One must **differentiate** within local communities in terms of assets and social identity such as financial resources, education, gender and livelihood strategy (i.e. farming and pastoralism). These factors influence people's participation in village decision-making, their bargaining power vis-à-vis investors and how they experience implications. For example, households in adverse economic conditions, be it due to a drought or for personal reasons, suffer most when they lose or give away land and are left without a basis for their livelihoods. On the other hand, villagers from poor households seem to make use of new labour opportunities more often than members of better-off households.

The **perception** of the land deals varied among the villagers and changed over time. Many local inhabitants deliberately agreed to the forestry investments and saw them as a unique opportunity to improve their livelihood situation. The initial positive views were bound to the following conditions: (i) a fair land deal process; (ii) the possibility to keep the own land and land-based livelihood strategies; and (iii) opportunities to earn additional income. Depending on their experiences with the investors, local people's perceptions remained positive, or became more critical or even strongly negative.

In a global comparison, the analysed cases feature relatively favourable conditions due to Tanzania's progressive land laws and because the forestry companies examined strive to have good relations with local people as a means of protecting their plantations from fire. Nevertheless, the land acquisition processes were conflict-ridden and their outcomes ambivalent. It can be assumed that land deals under less favourable conditions have worse consequences for local communities.

The study **concludes** that largely positive outcomes for local people can only be expected when the following bundle of conditions in the target countries of land deals are met:

- Land acquisitions need to be restricted to areas with ample land availability so that they do not necessarily interfere with existing land-based livelihood strategies;
- Any land rights including individual and common customary rights must be acknowledged by the national government;
- Decisions regarding land deals should be taken locally. This also requires functioning local government structures;
- There needs to be a political will and a commitment by officials at all levels of government to implement the provisions of the law and support the local population in their negotiations with investors. Further, strong civil society organisations should watch the government and step in in favour of local populations if necessary;
- All social groups of the local population need to be well informed about their land rights and about the potential risks of a land deal; and
- Governments must maintain a transparent and critical discourse about land deals.

This bundle of conditions is hardly ever met in the target countries. Hence the contemporary global land rush poses severe risks to rural people's livelihoods. The findings of the thesis support voices campaigning for alternative pathways of agrarian development in the Global South. At the same time, in the absence of any possibility of halting the global land rush for the foreseeable future, there is a need for strict regulations on ongoing and forthcoming land deals. The thesis provides a range of **recommendations** based on the aforementioned conditions and beyond, and points to related research needs. One example is the participatory land use planning at village level that has recently been made a requirement for agrofuel projects in Tanzania. More research is needed to understand how this detailed local analysis and planning, if implemented beforehand, may influence decision-making on land deals and whether it should become a model for other contexts.

The thesis provides two forms of **scientific contribution**. First, it enriches empirical knowledge about the global land rush in a nuanced manner by analysing cases of investments in forestry – a hitherto sparsely researched sector. It sheds light on the complexity of land deal procedures, particularly in terms of customary land rights and power relations; it considers social differentiation and gives local people a voice. Second, the study adds to the methodological discussions about how to conduct research into the global land rush. It provides some critical reflections about existing practices and proposes rigorous methods of data presentation and reproduction. Finally, the thesis contributes to **policy debates** by offering conclusive arguments against the global land rush and recommendations for how to restrict ongoing land deals and thereby encourage more socially acceptable processes and positive implications for rural people.

## Zusammenfassung

Seit einigen Jahren erfahren rurale Gebiete im Globalen Süden eine zunehmende Nachfrage nach Land durch Investoren. Private Firmen erwerben Agrarland, um mit dem Anbau von verschiedenen landwirtschaftlichen Erzeugnissen, inklusive Agrartreibstoffen und Forstprodukten, Gewinne zu erzielen. Die grossflächigen Landdeals und die damit zusammenhängenden Investitionen rufen zahlreiche Hoffnungen und Befürchtungen bezüglich der ländlichen Entwicklung und der Lokalbevölkerung hervor. Allerdings gibt es bisher nur wenig gesichertes Wissen über diesen „globalen Ansturm auf Land“ (*global land rush*), der mit negativer Konnotation auch als „Landraub“ (*land grabbing*) bezeichnet wird.

Diese Dissertation hat zum **Ziel**, einen Beitrag zu einem differenzierten Bild des *global land rush* zu leisten. Sie stellt dazu die folgenden Fragen:

1. *Wie gestalten sich Landerwerbs-Prozesse?*
2. *Welches sind die Auswirkungen von Landerwerb und den diesbezüglichen Investitionen auf den Lebensunterhalt der Lokalbevölkerung?*
3. *Wie nehmen lokale Bewohnerinnen und Bewohner ausländische Landinvestitionen wahr?*
4. *Wie werden Daten zum globalen Ansturm auf Land erzeugt und wiedergegeben?*

Die Studie geht diesen Fragen durch Fallstudien zu zwei Forstwirtschafts-Investitionen und durch eine Analyse von Berichten und Datenzusammenstellungen zur Landdeal-Situation in Tansania nach. Vier wissenschaftliche Artikel beleuchten verschiedene Aspekte dazu: Sie analysieren die Land-Transaktionsprozesse und diesbezügliche Machtfragen, die Anerkennung und Verletzung von lokalem Gewohnheitsrecht, Auswirkungen der Investitionen und lokale Sichtweisen auf dieselben (Artikel I und II). Zudem diskutieren sie die Relevanz der Anerkennung von pluralen Landrechtssystemen in internationalen Richtlinien zu Besitz und verantwortungsvollen Investitionen (Artikel III) und Herausforderungen bei der Datensammlung sowie mangelhafte Forschungsmethoden bei der Darstellung der Landdeal-Situation in Tansania (Artikel IV).

In der Studie wird eine einzigartige Kombination von konzeptionellen Ansätzen angewendet: eine kritische Lebensunterhalts-Perspektive (*critical livelihoods perspective*), ein Eigentums-konzept und die Perspektive des Rechtspluralismus (*property concept* und *legal pluralism perspective*), die Zugangstheorie (*access theory*) und ein Model zu Verhandlungsmacht (*bargaining power model*). Dies hat mir Folgendes ermöglicht: (i) Fokussierung auf die Handlungsmöglichkeiten (*agency*) der lokalen Bevölkerung und differenzierte Betrachtung derselben, (ii) ein gutes Verständnis von Besitz und Zugang zu Land in seiner gesamten Komplexität, (iii) eine Analyse von Machtbeziehungen unter verschiedenen Blickwinkeln. Die Artikel basieren auf empirischen Daten aus Feldforschung zwischen 2009 und 2013 und auf der Analyse von Gesetzestexten sowie Berichten über und von Investoren. Ich habe qualitative Interviews mit DorfbewohnerInnen, mit BeamtenInnen von lokaler bis nationaler Ebene und mit Vertretenden von Investoren, Zivilgesellschaftsorganisationen und aus der Forschung durchgeführt. Weitere Primärdaten wurden durch teilnehmende Beobachtung und durch Gruppendiskussionen und partizipatives Kartieren generiert.

Die Studie (siehe Artikel IV) zeigt auf, dass die Datenerhebung zur Landdeal-Situation in Tansania dadurch erschwert wird, dass die nationale Regierung keinen Überblick über die Landdeals hat. Aber auch **mangelhafte Forschungsmethoden** tragen zu den Schwierigkeiten bei. Die Quellen der Daten werden in vielen Publikationen in aggregierter Form oder unvollständig wiedergegeben. Zudem stammen die Angaben oft von Medien oder Homepages der Investoren. Diese Quellen haben sich in vielen Fällen als unzuverlässig erwiesen. Diese Mängel führen zu einer Verbreitung von unzulänglichen Informationen, wie zum Beispiel der Berichterstattung über Landtransaktionen, die nie stattgefunden haben. Insgesamt resultieren sie in einem verzerrten Bild zur Landdeal-Situation in Tansania und wohl auch anderswo.

Die Fallstudien fokussieren auf zwei europäische Firmen, welche sowohl privates als auch Gemeinschaftsland erworben haben (siehe Artikel I-III). Sie illustrieren, dass Landerwerb in Tansania langwierige und komplizierte **Prozesse** mit sich bringt. Diese sind von einer Kombination von Machtsträngen (*power strands*) beeinflusst:

- Landrecht, welches im Fall von Tansania im Vergleich zu anderen afrikanischen Ländern relativ vorteilhaft ist in Bezug auf die Anerkennung von Gewohnheitsrecht und aufgrund der Auflage, dass die Lokalbevölkerung einer Landtransaktion zustimmen muss
- Ungleiches Wissen über Landrechte unter der Lokalbevölkerung und im Vergleich zu den Investoren
- Einflussreiche Regierungspersonen (bzw. Zugang zu ihnen)
- Nationale Entwicklungsdiskurse, welche in Tansania und in vielen anderen Ländern Landdeals legitimieren und fördern
- Widerstand der Lokalbevölkerung durch Drohung (und Umsetzung) von zerstörerischen Akten, wie zum Beispiel das Abbrennen von Forstplantagen
- Ungleiche Ressourcen und Alternativen zum Deal: Die finanziellen Ressourcen der Investoren und die fehlenden Alternativen seitens der Lokalbevölkerung sind zentral in Verhandlungssituationen.

Regierungsbeamte und PolitikerInnen auf lokaler, Distrikt- und regionaler Ebene spielen eine wichtige Rolle bei der Entscheidungsfindung der Dorfbevölkerung, bei der Identifizierung und Anerkennung von lokalen Landrechten und bei der Einigung bezüglich Kompensation. Die Art, wie die RegierungsvertreterInnen ihre Rollen wahrnehmen – ob sie die Lokalbevölkerung unterstützen oder ob sie eigene Interessen oder nationale Entwicklungsziele verfolgen – beeinflusst die Auswirkungen der Deals massgebend.

Die Studie zeigt, dass die Anerkennung von Gewohnheitsrechten ein heikles Unterfangen ist. Lokale Ansprüche beinhalten überlappende und manchmal sich widersprechende Rechtsbündel. Zudem sind lokale Eliten – in Tansania unter anderem gewählte Dorfabgeordnete – nicht immer im Bild über alle flexiblen Besitzverhältnisse in ihrem Gebiet und können diese deshalb nicht hinreichend gegen aussen vertreten. Insgesamt ist es nahezu unmöglich, bestehende Landrechte vollumfänglich zu schützen. Die untersuchten internationalen Richtlinien zu Besitz und verantwortungsvollen Investitionen befassen sich nur unzureichend mit dieser Komplexität von pluralen Landrechtssystemen.

Die ansässige Bevölkerung erfährt positive und negative **Auswirkungen** der Investitionen auf unterschiedliche Weise. Die Firmen haben Kompensationen in Form öffentlicher Infrastruktur beziehungsweise in Bargeld bezahlt. Sie bieten Arbeitsmöglichkeiten, wie von vielen Menschen erhofft, allerdings zu enttäuschenden Bedingungen was Lohn, Arbeitszeit und Jobsicherheit betrifft. Dennoch begrüßen einige der ärmeren Haushalte diese Arbeitsmöglichkeiten als zusätzliche Einkommensquelle. Beide Landdeals haben zu Fällen geführt, in denen zahlreiche DorfbewohnerInnen Land gegen ihren Willen verloren haben. Dies geschah hauptsächlich – aber nicht nur – in Gebieten, in denen die Umsiedlungen während des nationalen Dorfentwicklungsprogramms (*villagization policy*) Mitte der 1970er-Jahre zu komplizierten Landbesitz-Verhältnissen geführt haben. In vielen Fällen wurde unzureichende Kompensation bezahlt. In den gravierendsten Fällen hat sich die Ernährungssicherheit der betroffenen Haushalte verschlechtert. Die negativen und positiven Auswirkungen können nicht gegeneinander abgewogen werden, da sie nicht unbedingt dieselben Personen betreffen.

Die lokalen Bewohnerinnen und Bewohner müssen **differenziert** betrachtet werden. *Assets* und Aspekte von sozialer Identität wie finanzielle Ressourcen, Bildung, Geschlecht und Lebensunterhaltstrategie (Landwirtschaft oder Pastoralismus) sind relevante Faktoren. Diese beeinflussen die Teilnahme an Dorfsentscheidungen, die Verhandlungsmacht gegenüber Investoren und die Art, wie Auswirkungen erfahren werden. Zum Beispiel leiden Haushalte, die sich wegen einer Dürre oder aus persönlichen Gründen in widrigen wirtschaftlichen Um-

ständen befinden, am meisten, wenn sie Land verlieren oder weggeben und ohne Grundlage für ihren Lebensunterhalt verbleiben. Andererseits scheinen Mitglieder von armen Haushalten die neuen Arbeitsmöglichkeiten mehr zu nutzen als Personen aus wohlhabenderen Familien.

Die **Wahrnehmung** der Landdeals variiert innerhalb der Bevölkerung und veränderte sich mit der Zeit. Viele DorfbewohnerInnen haben den Forstinvestitionen bewusst zugestimmt und sahen sie als einzigartige Chance, ihre Lebenssituation zu verbessern. Die anfänglich positive Sichtweise war an folgende Bedingungen geknüpft: (i) ein fairer Land-Transaktionsprozess, (ii) die Möglichkeit, das eigene Land und landbasierte Lebensunterhaltsstrategien beizubehalten, und (iii) die Gelegenheit, zusätzliches Einkommen zu verdienen. Je nach ihren Erfahrungen mit den Investoren ist die Ansicht der Menschen positiv geblieben oder wurde kritischer bis stark negativ.

Die untersuchten Fälle weisen verhältnismässig vorteilhafte Bedingungen auf – dies aufgrund Tansanias fortschrittlichem Landrecht und weil die untersuchten Forstunternehmen sich um gute Beziehungen zur Lokalbevölkerung bemühen als Strategie, ihre Plantagen vor Feuer zu schützen. Trotzdem waren die Land-Transaktionsprozesse stark von Konflikten geprägt und die Auswirkungen ambivalent. Es kann angenommen werden, dass Landdeals unter weniger günstigen Bedingungen schlimmere Konsequenzen für DorfbewohnerInnen haben.

Die Dissertation **kommt zum Schluss**, dass mehrheitlich positive Auswirkungen für die Lokalbevölkerung nur dann erwartet werden können, wenn folgende Bedingungen in den Zielländern von Land-Investitionen erfüllt sind:

- Landerwerb muss auf Gebiete mit ausreichender Landverfügbarkeit limitiert werden, so dass er nicht zwingend in existierende landbasierte Lebensunterhaltsstrategien eingreift.
- Alle Landrechte, inklusive private und gemeinschaftliche Gewohnheitsrechte, müssen staatlich anerkannt sein.
- Entscheidungen bezüglich Landtransaktionen sollten auf lokaler Ebene getroffen werden. Dies bedingt auch eine funktionierende lokale Regierungsstruktur.
- Es braucht politischen Willen und Engagement von Regierungsbeamten auf allen Ebenen, die Gesetzesgrundlagen umzusetzen und die lokale Bevölkerung in ihren Verhandlungen mit Investoren zu unterstützen. Zusätzlich müssen starke Zivilgesellschaftsorganisation die Regierung beobachten und wenn nötig für die Bevölkerung eintreten.
- Alle Bevölkerungsgruppen müssen gut über ihre Landrechte und über mögliche Risiken von Landtransaktionen informiert sein.
- Die Regierungen müssen transparente und kritische Diskurse über Landdeals führen.

Dieses Bündel an Bedingungen ist kaum je erfüllt in den Zielländern. Der aktuelle globale Ansturm auf Land stellt folglich ein erhebliches Risiko für die Lebensgrundlagen der ländlichen Bevölkerung dar. Die Resultate dieser Arbeit unterstützen Stimmen, die sich für alternative Wege der ländlichen Entwicklung in Ländern des Südens einsetzen. Gleichzeitig – da der *global land rush* in absehbarer Zukunft nicht aufgehalten werden kann – sind strenge Regeln für laufende und bevorstehende Landdeals nötig. Die Studie bietet eine Auswahl an **Empfehlungen**, die auf den obengenannten Bedingungen basieren und drüber hinausgehen. Zudem weist sie auf entsprechenden Forschungsbedarf hin. Ein Beispiel ist die partizipative Landnutzungsplanung auf Dorfebene, die in Tansania kürzlich zur Bedingung für Investitionen in Agrartreibstoffprojekte gemacht wurde. Es braucht mehr Forschung um zu eruieren, wie diese detaillierte lokale Analyse und Planung die Entscheidungsfindung beeinflusst, wenn sie vorgängig zu einem Landerwerb durchgeführt wird, und ob diese Vorgabe ein Vorbild für andere Gebiete werden könnte.

Die vorliegende Studie trägt auf zwei Arten zu **wissenschaftlichem Wissen** bei. Erstens ergänzt sie empirisches Wissen über den globalen Ansturm auf Land in einer differenzierten Weise, und zwar durch die Analyse von Forstinvestitionen – einem bisher wenig untersuchten Sektor. Sie gibt Aufschluss über die Komplexität von Land-Transaktionsprozessen, vor allem in Bezug auf Gewohnheitsrechte und Machtbeziehungen, sie berücksichtigt soziale Differenzierung und gibt den betroffenen Bewohnern und Bewohnerinnen eine Stimme. Zweitens trägt die Studie zur methodologischen Erörterung darüber bei, wie der *global land rush* erforscht werden soll. Sie bietet eine kritische Betrachtung bestehender Forschungspraktiken und schlägt Methoden zur präzisen Darstellung und Weiterverwendung von Daten vor. Schlussendlich trägt die Arbeit zu **politischen Debatten** bei, indem sie schlüssige Argumente gegen den *global land rush* und gleichzeitig Empfehlungen vorbringt, wie bestehende Landdeals eingeschränkt werden sollen, damit eher sozialverträgliche Prozesse und günstigere Auswirkungen für ländliche Bewohnerinnen und Bewohner erreicht werden können.

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## **Part I – Framing and Synopsis**



# 1 Introduction

The terms ‘global land rush’ or ‘land grabbing’ refer to a multi-faceted phenomenon that takes place mainly in rural areas in the Global South. In short, it can be defined as an increase in large-scale land acquisition by (foreign) investors in recent years. The land deals covered by these terms are conducted by differing private and public actors for a variety of purposes, including the production of food crops, agrofuel or forestry products, or for speculative reasons. The land acquisitions – be they in the form of long-term leases, concessions or outright purchase – and related land investment have led to controversial debates. The potential advantages for rural areas include new income opportunities, improved infrastructure and technologies. Concerns are related to violations of local people’s (often customary) land rights, the loss of access to and degradation of natural resources, and ultimately decreased food security in the respective areas.

This PhD thesis aims to contribute to a differentiated view of large-scale land deals in rural areas. Through a case study analysis, it sheds light on detailed land acquisition procedures and decision-making processes, and on the implications of transnational land deals for local people and their livelihoods. The conceptual and methodological approaches applied focus on acknowledging different social groups among local communities, on their perceptions of the foreign land deals and on power relations among different stakeholders. The empirical data for this PhD study were<sup>1</sup> collected and generated in Tanzania. Tanzania – which has an apparent abundance of land, and attractive investment policies – is one of the typical target countries for foreign investors searching for land. Tanzania has comparatively progressive land laws in terms of respecting customary land rights. This makes it an interesting country in which to analyse the acknowledgment of local land tenure during land deal processes. The case studies analyse two European companies investing in tree plantations. Forestry is a sparsely researched sector in the context of the recent land rush, compared to investment for food and agrofuels. It is a sector with presumably growing global relevance that deserves greater attention.

*Part I – Frame and Synopsis* of this thesis is structured as follows. First, I give an overview of the recent land rush debate, including discussions of its characteristics, actors, related discourses, processes and outcomes. Further, I provide insights into forestry as a specific investment sector. The introduction also presents the objectives and research questions of this thesis and concludes with the research design. In the two subsequent sections I illustrate the conceptual and methodological approaches that were applied in this study. In the fourth section, on Tanzania, relevant information regarding land laws, investment policies and the situation of foreign land deals is provided. The next section describes the case study sites and investment projects analysed in this research. The results of the PhD thesis as published in four research papers are summarised in section six. Finally, section seven provides some reflections on the research procedure, findings and conclusions regarding the main research questions, and recommendations for further research and policy.

*Part II – Research Papers* contains the four research papers that form the core of this thesis:

- Paper I: **Locher M., Müller-Böker U. 2014:** “Investors are good, if they follow the rules” – Power relations and local perceptions in the case of two European forestry companies in Tanzania. *Geographica Helvetica*, 69(4), 249-258.
- Paper II: **Locher M.** submitted: “How come others are selling our land?” – Customary land rights and the complex process of land acquisition by a UK-based forestry company in Tanzania. Submitted to: *Journal of Eastern African Studies*.

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<sup>1</sup> I use the word ‘data’ as a plural, despite of the fact that the usage as a singular („data is...“) has become more common. See related considerations about the epistemology of land rush data in Edelman (2013, p. 489).

- Paper III: **Locher M., Steimann, B., Bishnu, R. U. 2012:** Land grabbing, investment principles and plural legal orders of land use. *Journal of Legal Pluralism*, 65, 31-63.
- Paper IV: **Locher M., Sulle E. 2014:** Challenges and methodological flaws in reporting the global land rush: observations from Tanzania. *Journal of Peasant Studies*, 41(4), 569-592.

The first paper focuses on the land deal processes and outcomes in the two case studies. It sheds light on power relations between investors and villagers and on the views of local people. The second paper zooms in on the recognition of contested customary land rights and statutory law in a complex land tenure situation, where the investor's land acquisition has generated considerable conflict. In the third paper, the relevance of customary land laws and plural legal orders of land in international guidelines for land tenure and responsible investment is discussed. Finally, in the fourth paper, an analysis of methodological challenges and shortcomings in researching the global land rush is provided and their consequences for the picture of contemporary land deals in Tanzania are displayed.

## 1.1 The 'global land rush'

### 1.1.1 Definitions, drivers, scale and data quality: what do we mean?

The most widely used **term** in the debate about contemporary land acquisitions has been 'land grabbing'. For my research, however, I have increasingly preferred to use other terms. I argue that the term 'land grabbing' is not a particularly suitable analytical term because of its implicit connotation of illegality and force (D. Hall 2013, p. 1600; Taylor and Bending 2009; Zoomers and Kaag 2014, p. 201). Smalley and Corbera (2012, p. 1040) point out that 'land grabbing' excludes the "possibility of a just transfer of land". I reason that this possibility should at least not be ruled out from the outset of a study. While I recognise the political power of the term 'land grabbing' and the importance of activists' and other critics' work in this regard, I prefer less confusing and emotionally loaded expressions for academic purposes. Hence, I have mainly used 'land rush' and terms such as 'land deals' or 'land acquisitions' in my research. In my opinion, 'land rush' is less misleading than 'land grab', but portrays some of the scale and urgency of the phenomenon.<sup>2</sup>

The phenomenon under study actually represents not *one* land rush, but consists of "multiple converging processes" (Cotula 2013, p. 173) that can also be termed "commercial pressures on land", as the International Land Coalition (ILC 2014) calls it (Peluso and Lund 2011, p. 669; Zoomers and Kaag 2014, p. 207). Scholarly literature shows great variance in what is considered 'land grabbing' or land rush. This variety is demonstrated along the **characteristics** listed below that are deemed relevant by most definitions in some form, but in differing ways<sup>3</sup>.

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<sup>2</sup> The term 'land rush' can also be seen as encompassing a broader phenomenon than 'land grabs', based on definitions that distinguish between 'land grabs' and other large-scale land deals. According to these definitions, land deals are considered as grabs when they feature specific characteristics, for example when the investment has a negative impact on food security of the recipient country (a definition used by 17 studies on land grabbing in Latin America and the Caribbean, conducted by the Agriculture Organization of the United Nations (FAO), available in Spanish only, quoted by Borras, Kay, et al. 2012, p. 403), when the land acquisition process displays certain negative criteria such as violation of human rights or not being based on free, prior and informed consent of the affected land-users (ILC 2011, p. 2) or "when land is expropriated using means other than voluntary market purchase" (Levien 2012, p. 941). Yet, these explicit definitions of the term 'land grab' do not seem to prevail. For a critical reflection (in German) on the analytically diffuse, but politically useful term see Ouma (2012).

<sup>3</sup> This compilation is based on Derek Hall (2013, pp. 1584f), but I have adapted his list and quoted other authors accordingly. The definitions Hall draws on can be found in: Akram-Lodhi (2012, p. 126), Arduino et al. (2012), Borras, Franco, et al. (2012), Margulis et al. (2013, p. 2), White et al. (2012).

- *Scale of land deals*: Most definitions require that land acquisitions be large in order to count, often setting a lower limit of, for example, 1,000 hectares (e.g. Cotula et al. 2009) or 200 hectares (Land Matrix 2015; Locher and Sulle 2013; Messerli et al. 2014).
- *Foreign vs. domestic origin of investors*: Some research (e.g. Daniel and Mittal 2009; Arduino et al. 2012; a set of FAO studies quoted by Borras, Kay, et al. 2012, p. 403<sup>4</sup>) and much of the media coverage focus exclusively on land acquisitions by foreign investors. More recent definitions implicitly or explicitly include domestic investments (e.g. White et al. 2012). Though domestic deals are usually smaller in scale and there is (even) less systematic knowledge about them, anecdotal evidence suggests that, taken together, they are of considerable relevance – potentially similar or greater in impact than transnational land deals (Deininger and Byerlee 2011, p. xiv; Cotula 2012).
- *Target countries*: Research that employs the terms ‘land grab’ or ‘land rush’ focuses almost exclusively on land deals in the Global South, thus implicitly making this part of the definition. Some definitions also explicitly mention target countries being ‘poor’ or ‘developing countries’ (e.g. Daniel and Mittal 2009). Only a few publications (e.g. Englert and Gärber 2014) see land investments in Western countries as part of the same phenomenon.
- *Purpose of land deals*: Agricultural production, resource extraction and speculation are named as specific purposes of ‘land grabbing’. There is disagreement over whether acquisitions for urban development and industry should be considered as part of the same phenomenon. A particular category of land deals is summarised under the term ‘green grabs’. Green grabs are defined as “the appropriation of land and resources for environmental ends” (Fairhead et al. 2012, p. 237) and include land deals for biodiversity conservation, carbon sequestration and ecotourism, for example (Fairhead et al. 2012; Corson et al. 2013).
- *Temporal criteria*: Some specify ‘current’ or ‘contemporary’ land grabbing, while others make no reference to time, or explicitly state that the current phenomenon is part of a long-term historical process (e.g. Alden Wily 2012; Cotula 2013, p. 173; P. E. Peters 2013a, 2013b).

Besides these characteristics used to define the land rush, land deals also vary regarding other criteria such as the duration of investment, the business models (estates, outgrowers), the resources accessed (land, water, minerals, forests) and the degree of interference in existing uses (R. Hall 2011b, p. 203). There are both export-oriented ventures and ones that sell agrarian products on domestic markets (Borras and Franco 2010; Schoneveld 2014). One new analytical term coined in the context of the land rush is ‘flex crop’ (Borras, Franco, et al. 2012, p. 846). Flex crops are plants with multiple uses that can be sold as food, feed, fuel or an industrial raw material, depending on market developments. Examples are soy, sugarcane and oil palm. Cultivation of flex crops is reported to be expanding (ibid., p. 847, 851).

Foreign land acquisitions in developing countries have been taking place for a long time, particularly for the establishment of large plantations in colonial and post-colonial times (GRAIN 2008; Kugelman 2009; Songwe and Deininger 2009; Taylor and Bending 2009). However, there is a common understanding that the number and size of international land investments in countries in Africa, Asia and Latin America has considerably increased over the last decade. The major reason is a growing demand for agricultural products and a continuing surge in the prices of agricultural commodities and land in a situation where natural resources are becoming more and more scarce (Deininger and Byerlee 2011, p. 7; Rauch 2014, p. 227). More specifically, a combination of global crises is generally cited as the immediate drivers of the recent global land rush (Borras and Franco 2012, p. 36; White et al. 2012). These crises involve food, energy, climate change and finance. In this context, Ruth Hall (2011a, p. 1) has coined the term “triple-F crisis: food, fuels and finance”. Food prices peaked – partly as a

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<sup>4</sup> See Footnote 2 for more information on the FAO studies.

result of the agrofuel boom, but also due to food speculations – in 2007-08 and again in 2010, after three decades of relatively stable or declining agricultural commodities prices (De Schutter 2011, p. 251; Woodhouse 2012, p. 778). The food price inflation has drawn investor attention to agrarian land. Yet, for Southern Africa, R. Hall (2011, p. 202) found that large land deals for food production seem to be rare; agrofuel plantations are more common in this region. Worldwide production of agrofuels has grown rapidly since the beginning of the twenty-first century, driven by the increasing attention of policy makers to climate change, energy supply concerns and rising oil prices<sup>5</sup> (Cotula et al. 2008; Daniel and Mittal 2009; Zah and Ruddy 2009). Ethanol production (e.g. from sugar cane or maize) and biodiesel production (e.g. from palm oil, soy or jatropha<sup>6</sup>) first exploded in the US and Germany, but from around 2005 onwards increasingly spread to tropical regions (Cotula et al. 2008; J. Peters and Thielmann 2008, p. 1538). Finally, the subprime crisis of 2007-08 is considered to have attracted speculative interests to land as a comparatively stable financial asset. Investors are allured by the low price of arable land in target countries, particularly in Africa (P. E. Peters 2013b, p. 18).<sup>7</sup> Overall, McMichael (2012, p. 690) argues that during “the conjunction of food, energy and financial crises”, international capital markets have gravitated “towards agriculture as a relatively safe investment haven for the relatively long-term”.

**Data** on the global land rush so far are of **limited quality** (Cotula 2013; Schoneveld 2013, p. 21f, 2014; see also Research Paper IV). This is partly due to the dynamic and opaque nature of the land acquisitions. The available information has relied – particularly in the early years of the debate – on media articles and single case studies, often conducted by non-governmental organisations (NGOs) initially. Recently, more academic knowledge has become available. There are arguably both over- and underestimates of land deals. The media, for instance, tend to exaggerate the extent of the phenomenon (Cotula 2013, p. 128; Deininger and Byerlee 2011, p. 50; Friis and Reenberg 2010, p. 9), and some investors seem to mask failed investments (Hanlon 2011 in Baglioni and Gibbon 2013, p. 1561). On the other hand, investors and involved governments of host countries rarely provide transparent information about ongoing negotiations or concluded land deals, and thus contribute to an underestimation of land deals (Cotula 2012, 2013, p. 128; Pearce 2013). Part of the uncertainty about land deals can also be attributed to flawed research methodologies, such as aggregating data of uneven quality (Edelman 2013; Oya 2013a; Scoones et al. 2013). The thesis addresses these methodological challenges, among other things (see Research Paper IV).

The Land Matrix, a large open-source database run by the International Land Coalition (ILC), in partnership with research institutes and donor organisations, provides information about more than 1,000 concluded land deals totalling nearly 38 million hectares (Land Matrix 2015, in March 2015). For the share of different purposes of land deals as reported in the Land Matrix see Figure 2 in Section 1.1.7.

Researchers from a broad range of academic subjects using varying approaches have described and analysed different aspects of the global land rush (see also Section 3.1 on the fast accruing evidence). Main findings are summarised in the following, with a particular focus on Africa.

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<sup>5</sup> Binding targets set by the European Union, which entered into force in early 2009, demand that 20% of all energy used in the EU and 10% of each Member State’s transport fuel must come from renewable sources by the year 2020 (Franco et al. 2010).

<sup>6</sup> Jatropha, more precisely *Jatropha curcas*, is a poisonous and thorny shrub with oil-bearing nuts that grows in tropical areas and is highly drought-resistant. It is sometimes planted in Tanzania as hedges to mark boundaries and to protect livestock and crops (Gmünder 2010, p. 3; Mitchell 2008, p. 15).

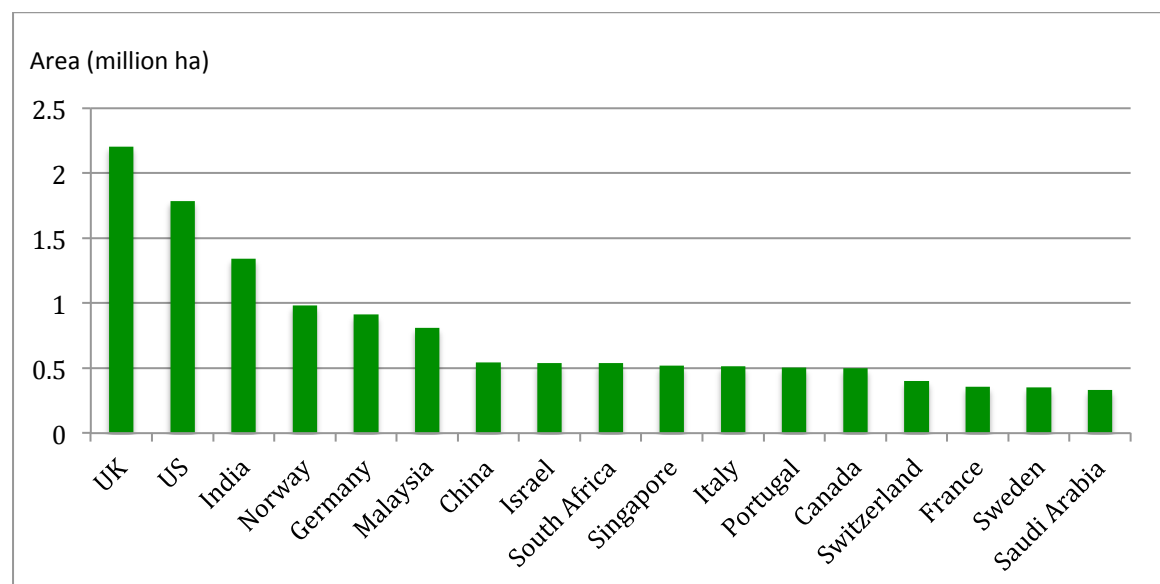
<sup>7</sup> Daniel (2012, p. 716) quotes the CEO of a private equity group enthusing about the prices of agricultural land available in Southern Africa at a fraction of the prices in North and South America: “That alone is an arbitrage opportunity. We could be moronic and not grow anything and we think we will make money over the next decade.”



### 1.1.2 Actors in the global land rush

Investors are usually seen as the primary actors in the global land rush, so this section starts by exploring the different types of investors. It goes on to describe the role international organisations play, before it turns to the actors in the countries targeted by investors, as far as discussed in literature.

**Private investors** have conducted most of the recent land deals. This includes big food agribusinesses, agrofuel firms (a considerable number of them start-up companies) and energy giants (Cotula 2013, p. 173). Increasingly, private institutional investors are also involved. They can be defined as “financial organizations that invest large sums of money in securities, real estate, and other assets on behalf of third parties” (Daniel 2012, p. 704; see also White et al. 2012, p. 629), such as mutual funds, investment banks (e.g. Goldman Sachs), pension funds, private equity funds (e.g. Carlyle Group) and hedge funds<sup>8</sup> (McMichael 2012, p. 686). In terms of geographical origin of the investors, Schoneveld (2013, p. 29; see also Schoneveld 2014, p. 40), who examined data on more than 500 farmland investments in sub-Saharan Africa between 2008 and 2012, found that investors from Europe were dominant (particularly the UK, Norway and Germany), followed by investors from the US, India and Malaysia (see Figure 1).



**Figure 1: Origin of transnational investments in sub-Saharan Africa, by total area acquired;** Source: simplified own representation based on Schoneveld (2013, pp. 29, 262); only data of “Category I” in terms of reliable data resources were included; top 17 countries of origin are displayed out of totally 47 countries of origin in 526 analysed investments in 36 countries of sub-Saharan Africa.

**Governments** can become direct investors through state-owned firms and sovereign wealth funds. Yet they seem to do so relatively rarely. There are only a few cases of land deals reportedly having been signed directly between two states, e.g. between the governments of Syria and Sudan. Thus, the predominant view, which is often presented in the media, that the investors are food-insecure states might need to be revised. However, governments might support investments through other means such as guarantees or bilateral agreements (Cotula et al. 2009, pp. 35–37; Daniel 2012, p. 703).

<sup>8</sup> The role of private equity funds in the global land rush is comprehensively discussed by Daniel (2012). Private equity fund managers collect funds from limited partners and invest them in ‘target companies’ in order to make profit for their limited partners and themselves. According to McNellis (2009, p. 10), “fund managers have the mandate to invest in almost any asset class in any location provided the return potential makes investment sense”. Their activities are considered to be even less transparent and less regulated than those of other investors, as they operate with little regulatory oversight (Daniel 2014, p. 714; McNellis 2009, pp. 2f).

Land investments are supported by certain **international development organisations**, such as various members of the World Bank Group, in particular the International Finance Corporation and the Foreign Investment Advisory Service, and others such as the European Bank for Reconstruction and Development and the International Rice Research Institute (Daniel and Mittal 2009; McMichael 2012, p. 696). These donor organisations facilitate land deals in two main ways. First, they support the creation of favourable investment conditions in host countries (as described in Section 1.1.5). Second, some of them provide direct funding for land investments “[d]efined as multilateral institutions providing long-term finance for private sector enterprises in developing and reforming economies” (Daniel 2012, p. 721). According to McMichael (2012, p. 686), the World Bank and the Food and Agriculture Organization of the United Nations (FAO) facilitate land deals dedicated to food production, with the aim of mitigating the world food price crisis. These investments are strongly criticised. Daniel (2012, p. 725) disapproves the non-transparent and uncompromisingly profit-oriented activities of private equity fund managers and states: “It is into such hands that the World Bank Group places funds while claiming to further its mission of global poverty reduction.”

**National governments of host countries** are involved in land deals in two major ways: First, many of them attract and encourage land investments through specific investment incentives and more generally by seeking to provide a convenient business climate. Their potential motivations for doing so are displayed in Section 1.1.4. Second, national governments govern the process of land deals through legal regulations regarding land and (foreign) investment. These issues are taken up in Section 1.1.5.

The literature on the role and intentions of individual actors in the land deal processes is rather limited. It suggests that **government officials and local elites** including local chiefs influence land deals for a variety of reasons, reportedly often in favour of the investors. Potential motives are personal benefits including rent-seeking, but also predominant discourses regarding national development, as will be described in more detail below.

Lastly, we should not ignore agency on village level. **Local people** may support or oppose foreign investments. While their scope for intervention may be limited (German et al. 2013, p. 15; Nolte and Vāth 2015; Vermeulen and Cotula 2010), they may have considerable influence on the outcomes of land rush processes in some contexts (e.g. Smalley and Corbera 2012 for two cases in Kenya; Evers et al. 2013a, p. 6). However, with some exceptions in more recent literature, there has been little focus on local people’s role and perceptions (Evers et al. 2013a, p. 4). This thesis makes a contribution in this regard.

### 1.1.3 Explanatory approaches from Marxist perspectives

Much research into the global land rush has been undertaken from theoretical perspectives inspired by Marx, involving fundamental criticism of the capitalist economy. Studies using these perspectives provide prominent conceptualisations of the land rush in different ways, as elaborated by Derek Hall (2013). Yet, the approaches used also have their limitations in grasping the phenomenon.

Some proponents of Marxist perspectives portray land deals as an **extension of capitalist relations** through the commodification of land and labour. For their analysis, they use Marx’s ‘primitive accumulation’ (Marx 1976), Harvey’s ‘accumulation by dispossession’ (Harvey 2003) and variations of these concepts (summed up in D. Hall 2013) to focus on processes of the enclosure of the commons and the privatisation of public assets for capitalist purposes respectively (e.g. Baird 2011; Borras and Franco 2012; Kröger 2014; White et al. 2012; Wolford et al. 2013). Studies using these approaches provide theoretically informed representations of the recent land acquisitions, linking them to earlier processes of the creation and reproduction of capitalist social relations as analysed by Marx. However, the approaches inspire problematic assumptions about the recent land rush, namely that the targeted natural resources and the affected people “were previously and straightforwardly ‘outside’ capitalism”

(D. Hall 2013, p. 1596) and that land deals necessarily involve dispossession (ibid., p. 1588) – assumptions that might hold true for many, but definitively not for all recent land acquisitions.

Another concept used by Marxist scholars is ‘accumulation by **extra-economic means**’ (e.g. Akram-Lodhi 2012). This approach is helpful for the analysis of political force and other forms of coercion used in land acquisitions. Yet, it is important to notice that common definitions of the global land rush are not limited to land deals involving some form of force, but include market transactions between willing sellers and buyers of land (D. Hall 2013, p. 1591f).

Finally, some publications drawing on Marxist traditions focus on the drivers of the land rush. The ‘triple F-crisis’ is considered part of a **general crisis of neoliberal capitalism** (Borras, Franco, et al. 2012; McMichael 2012; White et al. 2012). According to this view, in the twenty-first century accumulation strategies inherent to the capitalist economy have been confronted with an “accumulation crisis” (McMichael 2012), i.e. with shrinking opportunities for profitable investments<sup>9</sup>. Thus, in order to overcome this obstacle, investors are said to resort to ‘idle’ land in the Global South in a temporary attempt to solve the crisis through geographical expansion (Baglioni and Gibbon 2013, p. 1561). In sum, land deals are seen as “spatial fixes for over-accumulated capital” (Corson and MacDonald 2012, p. 268) and “symptomatic of a crisis of accumulation in the neoliberal globalization project” (McMichael 2012, p. 681). Framing the recent land rush as a result of crises inherent in the capitalist economy allows critics of the land rush to subsume a range of land-related dynamics into one term. However, some scholars stress that it is not sufficient to look only at the investor side for an understanding of the phenomenon, because “as the demand for land has increased, so has the supply” (Baglioni and Gibbon 2013, p. 1562). In the next sections I thus shed light on the agrarian development in the targeted countries and on influential discourses, policies and institutions.

#### 1.1.4 Agrarian development in the Global South

In recent years, governments in the Global South have increasingly encouraged land deals as a form of investment in their countries’ agrarian sector. This comes after governments and donors alike have seriously **neglected agricultural and rural development**, particularly in Africa (Cotula 2013, p. 174; Rauch 2014, pp. 229f; Zoomers and Kaag 2014, p. 205). As Rauch (2014, p. 233) formulates it, “[r]ural development has been entrusted to inadequately capacitated local governments on the one hand, and to the commercial interests of private business on the other”. Consequently, agrarian areas lack functioning rural markets and adequate infrastructure and suffer from reduced agricultural research and advisory services. At the same time, environmental conditions pose increasing constraints to agricultural activities in the form of soil degradation, water limitations and climate change (IAASTD 2009a; Rauch 2014, p. 232f). As a result, many marginal farm households had to put up with decreased incomes and have been forced to diversify their livelihood strategies. In often vulnerable situations, they depend on external sources of income and subsistence agriculture at the same time (Bryceson 2002; P. E. Peters 2013a, p. 551f; Rauch 2014, p. 229f). In more recent years, many researchers, governments and development agencies agree that some form of investment in the agrarian sector is urgent to achieve and maintain food security and combat poverty (HLPE 2013; IAASTD 2009a; Liu 2014; Woodhouse 2012, p. 791). Yet, there is less agreement on the desired kind of agrarian development. Two conflicting perspectives dominate on this issue.

The first perspective favours large-scale over small-scale farming. Proponents of this discourse promote a **large-scale industrialised agriculture** with input- and capital-intensive production and call for a new green revolution. They claim that this farming model is more efficient than

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<sup>9</sup> McMichael (2012, pp. 68f) describes the roots for the accumulation crises as: “rising ecological contradictions (anthropocentric climate change, fossil fuel depletion), which, combined with rising food prices, increase the reproductive costs of capital”.

small-scale agriculture due to economies of scale, which are based on a division of labour, the economical use of equipment, and technical superiority (Baglioni and Gibbon 2013, pp. 1570f; Cotula 2013, p. 173; German et al. 2013, p. 14; McMichael 2012, p. 694). Representatives of this perspective are among others global food empires (see Van der Ploeg 2010a) and some international organisations and research institutes (e.g. the International Food Policy Research Institute, see Borras and Franco 2010, p. 509). The World Bank argues that there is ample unproductive arable land and a high 'yield gap' in many regions of the world (Deininger and Byerlee 2011). These areas are considered favourable investment targets for large mechanised farms (McMichael 2012, p. 683; White et al. 2012, p. 632). The modernisation discourse in agriculture usually goes hand in hand with demands for neo-liberal trade models (White et al. 2012, p. 626; see below).

The presented view is criticised by proponents of the second perspective, who stress the importance of **low-external-input small-scale farms** for food security and poverty reduction in rural areas. Small farms are considered to be more productive than large farms, because of their use of family labour and adequate farming practices adapted to local environmental conditions. Proponents of this view argue that small producers contribute a considerable share of world food production (Baglioni and Gibbon 2013, pp. 1572–1574; GRAIN 2014; HLPE 2013; Van der Ploeg 2010b). However, Rauch (2014, p. 233) points out that the capacity of small-scale farmers to produce efficiently and to react to market dynamics has been reduced due to the neglect of this sector in recent decades. Advocates of small-scale agriculture further stress the multifunctionality of agriculture, arguing that it produces not only commodities, but can and should also fulfil ecological and cultural functions and provide livelihoods to rural poor (HLPE 2013, p. 45; IAASTD 2009b, p. 4). Thus, smallholdings are considered to stand for a more ecologically sustainable and socially equitable form of agriculture than large farms<sup>10</sup> (Bernstein 2014, p. 2). The small-scale farming model is promoted by some researchers, peasant organisations such as La Via Campesina and overall by proponents of the food sovereignty concept<sup>11</sup> (e.g. GRAIN 2015; HLPE 2013; Van der Ploeg 2010b).

Baglioni and Gibbon (2013, p. 1575f) argue that the dichotomy between the two positions has softened in recent times, giving way to a more nuanced debate that allows for context-specific arguments. Accordingly, the co-existence and **combination of both farming models** is increasingly being recognised and promoted as a third possible pathway for agrarian development (e.g. Bernstein 2014; Collier and Dercon 2014; IAASTD 2009a; for a description of several possible pathways of agrarian development see HLPE 2013, pp. 55-57).

Proponents of all described trajectories for agrarian development consider **investment in rural infrastructure** a necessity. In Woodhouse's view this imperative is "an inescapable part of the context for land deals with foreign investors" (Woodhouse 2012, p. 781), as most African governments seem to assert that they do not have the necessary means to provide the requisite infrastructure. Further, the governments of many African countries seem to be sceptical about the potential of small-scale farmers and hence **favour the large-scale farming model**, sometimes combined with the integration of smallholders (Cotula 2013, p. 173; German et al. 2013, p. 14; Schoneveld 2013, p. 195f). From this perspective, large-scale land deals and related investments are inherently welcome. They are expected to create a win-win scenario for investors and host countries, leading to agrarian development through a transfer of skills and technology, infrastructural improvements, and income options for rural populations (Azadi et

<sup>10</sup> White et al. (2012, p. 626) highlight that in fact it is not the scale of a farm that is relevant for socially and ecologically responsible farming, but its orientation in terms of low-input, labour intensive and sustainable farming techniques. They argue, however, that business companies seldom promote these techniques.

<sup>11</sup> The concept of food sovereignty is promoted by the global peasants' movement La Vía Campesina, among others, and can be defined as "the right of peoples and sovereign states to democratically determine their own agricultural and food policies" (IAASTD 2009b, p. 5). It can be seen as "a critical alternative to the dominant neoliberal model for agriculture and trade" (Wittman et al. 2010, p. 2, in Bernstein 2014, p. 2). For critical reflections on the concept see Edelman et al. (2014).

al. 2013; Borrás and Franco 2012, p. 35; Daniel 2012, p. 716). Accordingly, national politicians shape the land deal processes with their visions of national development. For example, Fairbairn (2013, p. 350) found that government officials in Mozambique were dismissive of peasant agriculture and therefore did not support local consultations, as they considered them obstacles to investment. P. E. Peters (2013b, p. 18) also claims that the land prices in Africa are low due to African politicians' not considering customary land rights to be full property rights; they would prefer to set aside such land for their ideas of national development.

The presented dominant view about (agrarian) development has also shaped policies and institutions such as legal regulations in land deal processes as outlined in the next section.

### 1.1.5 Policies, institutions and processes in target countries of the land rush

In order to understand the nature and outcomes of the land rush, I argue that it is necessary to look at how land deals take place. The processes of acquiring land in Africa are manifold, but they have not yet been fully or adequately researched (Nolte and Våth 2015, p. 71). This PhD thesis adds to the existing knowledge about the factors that influence land deal processes. These include investment policies and institutions such as land-related legal provisions, and the way in which regulations are implemented.

Numerous authors espouse the view that neo-liberal development discourses of the past few decades – translated into policies – have established conditions that have enabled and stimulated the recent land deals (Evers et al. 2013a, pp. 1ff; Fairhead et al. 2012; White et al. 2012, pp. 630f). Promoted and supported by the World Bank Group (WBG), the **business environment** in the target countries is said to have improved latterly and to have encouraged increasing foreign investment. For example, governments introduced regulatory and legal frameworks that provide the requisite investor protection and accounting standards. In many countries, the improvement of the business climate also first required the creation of modern land markets and a switch from a traditional system of land tenure to Western concepts of property. This was supported by donor-funded land titling programmes (Daniel 2012, p. 721f; Evers et al. 2013a, p. 5; P. E. Peters 2013a, p. 541; Zoomers and Kaag 2014, pp. 205f). Further, particular investment policies seem to play an important role in the land rush. In many African countries, including Tanzania, specific agencies are responsible for investment promotion, and policies are designed to attract foreign investors by offering financial incentives such as duty exemptions or tax holidays (Daniel and Mittal 2010; Evers et al. 2013a, p. 5; German et al. 2013, p. 14; Vermeulen and Cotula 2010, p. 910).

**Land property concepts**, and thus regulations regarding land deals, vary from country to country. In most African countries – unlike in Western Europe with its concepts of private land ownership – central governments have legal control over all or most land, and citizens can only hold land-use rights (Polack et al. 2013, p. 19). The exceptions are Ghana and Sierra Leone, where land is legally held by local chiefs. In practice, landholders in rural areas in most African countries base their individual and common rights on custom law. According to World Bank estimates, only between two and ten percent of the land in Africa is held under formal *de jure* land tenure, and this is mainly in urban areas (Deininger 2003, in Vermeulen and Cotula 2010, p. 905). The **legal status of customary land rights** differs in each country and ranges from being unrecognised and mostly ignored (e.g. Ethiopia, Cameroon, Senegal, Mauretania) to being almost fully recognised and protected (e.g. Ghana, Mozambique, Tanzania, Uganda) (Alden Wily 2011; German et al. 2013, p. 5; Polack et al. 2013, pp. 12–14; Schoneveld 2013; Vermeulen and Cotula 2010, p. 905). The laws of Mozambique and Tanzania even recognise customary land rights without formal documentation. However, for Mozambique, Fairbairn (2012, p. 347) found that the status of unregistered land rights is weaker than that of land rights with titles. Further, where the registration of customary rights is legally possible (e.g. Mozambique, Tanzania, Uganda), its implementation progress tends to be very slow (Cotula and Mathieu 2008, p. 23; Polack et al. 2013, p. 20).

**Regulations regarding land transfers** allow the central governments of almost all African states to issue long-term lease titles for up to 99 years to investors (Polack et al. 2013, p. 20; German et al. 2013, p. 5). Whether local landholders need to be consulted or need to give their approval to a land deal depends on the recognition of individual and common customary land rights. In Ethiopia and Cameroon, for example, the law does not foresee any consultation with the affected people. The laws of several countries require at least some sort of consent from the affected communities as a step in the land transfer process. The laws in Tanzania, Ghana and Mozambique prescribe that all land transfers must be approved by the respective landholders or by customary leaders. Further, the laws feature stipulations protecting access rights and granting compensation (German et al. 2013, p. 9; Polack et al. 2013, pp. 12–14; Vermeulen and Cotula 2010, p. 907). Yet, even in these countries, involuntary expropriation of land is legally possible in the name of ‘public interest’. However, according to German and her colleagues (2013, p. 7) this “was not observed in practice in the context of large-scale agricultural investments”. In numerous countries, including Tanzania and Zambia, the land acquisition process entails a reclassification of the given land plot, turning it into land under central government control, and thus permanently erasing customary rights. This is in contrast to Ghana, where the land remains under customary control, i.e. under local chiefs, during the leasehold period (German et al. 2013, p. 7; Zoomers and Kaag 2014, p. 203).

The relevance of the legal basis is challenged by recent research that compared land deal processes and outcomes in different African countries. Flaws in implementation and monitoring seem to be common in countries with differing laws and raise questions regarding **informal institutions and governance**. Schoneveld (2013) analysed the situation in four sub-Saharan countries with different legal frameworks in terms of respecting customary land rights. He found that the processes of land deals did not considerably vary among the four countries regarding consultation with local communities and compensation payments, despite the diverging legal situations. He observed that host states’ legal safeguards are often ignored or interpreted differently and thus are not effective. German et al. (2013) explored the situation in four countries – three of which are considered ‘best practice’ cases in terms of legal provisions (Alden Wily 2011) – and concluded that it was not the law, but the actors in the land transfer process that are of relevance for the protection of customary rights (German et al. 2013, p. 14). For example, Burnod and her colleagues (2013) have shown that state representatives in Madagascar, in a competition over authority, ignored the progressive land laws that recognise and protect local land rights. By simply claiming that untitled land was by default state land, they denied the legal rights of local land users. Further, there are suspected cases of rent-seeking by land officers and local elites in several places, including reports of customary leaders such as local chiefs personally pocketing compensation (Cotula 2013, p. 131; Fairbairn 2013, pp. 344ff; German et al. 2013, p. 11; Nolte and Vähä 2015). Finally, former and actual officials, and local elites sometimes collaborate with companies as consultants or on a more informal basis. They contribute their local knowledge about land governance and their networks to the investors’ land. This co-optation frequently leads to conflicts of interest when officials or local representatives, who are supposed to safeguard the local population’s customary rights, are simultaneously offered incentives to support the investors’ claims. However, despite the disappointing findings regarding the implementation of regulations, Vermeulen and Cotula (2010, pp. 912f) argue that strong land laws are essential, though not sufficient, to protect local people’s land rights.

### 1.1.6 Known and expected outcomes

Land deals are expected to have diverse implications, in relation to local people’s access to land and land-based resources, regarding labour and other income opportunities, in terms of new infrastructure, the modernisation of agricultural technologies and knowledge transfer, and also regarding social dynamics and conflicts. Environmental concerns have also been raised about monoculture plantations, but this PhD study does not look into these. Findings so far appear to show that the impacts are similar among different countries and settings, as argued



by Schoneveld (2013) who has analysed 38 projects in four African countries, and by Kaag and Zoomers (2014, pp. 202f) who edited a compilation of case studies from twelve countries in Asia, Africa and Latin America. Several studies – including research conducted by the FAO (Liu 2014) in five countries – suggest that the negative effects of land deals often outweigh the positive effects in target countries (see also Schoneveld 2013, p. 283; White et al. 2012, p. 633). Yet we need to differentiate between local impacts: there are often both winners and losers (Cotula 2013, p. 133f; Oya 2013b, p. 1535). Furthermore, according to Evers and her colleagues (2013a, p. 16) not all land deals lead to negative implications for local people.

Some of the reported and expected outcomes are further elaborated in this section. However, all findings need to be treated with due care, because there is still only limited and sometimes biased evidence on the impact of land deals on the host countries (Liu 2014; Nolte and Vāth 2015, p. 70; Oya 2013b, p. 1545). According to Cotula (2013, p. 127) and Oya's review of socio-economic impacts of the land rush (2013b, p. 1536), this is partly due to limited quality research on the subject. This thesis contributes sound empirical evidence to the existing knowledge – while being aware of the following issue brought up by Cotula. He emphasises that

*“...the time distribution of costs and benefits in large-scale investments is often uneven, so looking at short-term outcomes alone may result in a skewed picture: negative impacts – loss of land, for instance – are often felt first, while jobs, opportunities for local businesses and government revenues may only fully materialize at a later stage. For many recent agricultural investments in Africa, it is just too early to tell” (Cotula 2013, p. 127).*

The most commonly reported result of land deals is local people's **loss of access to land and land-based resources** such as farmland, forest or pastureland (Cotula 2013; Kaag and Zoomers 2014 p. 203; Schoneveld 2013 p. 186) When investors acquire land, this is usually for long periods of time (up to 99 years) and the process is often irreversible, in the sense that the land may be returned to the state but not to the former local landholders (Kaag and Zoomers 2014, p. 203). For reasons I highlighted in the previous section, customary tenure rights are often not properly respected or even completely ignored (Alden Wily 2011; Anseeuw, Alden Wily, et al. 2012). As a consequence, former landholders lose the basis for their subsistence or other land-based livelihood strategies, sometimes along with ancestral and spiritual values (McMichael 2012, p. 693). There are concerns about **reduced local food security** as a result of former landholders' limited or lack of access to land and the export-oriented enterprises of the investors. These concerns are even graver for target countries already suffering from food insecurity (Liu 2014, p. 11; Mann and Smaller 2010, p. 6).

In many cases, people are not only dispossessed of their land, but are also **displaced** (Kaag and Zoomers 2014, p. 203; Schoneveld 2013, p. 289). They are expected to find land elsewhere, but due to the increasing land scarcity it is feared that people often only find land that is less fertile or less accessible. Sometimes they might have no other choice than to move to urban areas (Cotula 2013, p. 131; Kaag and Zoomers 2014, p. 203). In the worst cases, land dispossession and evictions involve physical violence. For example villagers in Mali claim to have been beaten by the police (Oakland Institute 2011, in Cotula 2013, p. 130).

It seems that local landholders or land users are often not compensated for their loss (Cotula 2013, pp. 131f; Kaag and Zoomers 2014, p. 203). Particularly where the legal setting foresees **compensation** only for crops or other 'visible improvements', not for the land itself, people may lose grazing land, forests or farmland without standing crops (e.g. during dry season) (Cotula 2013, p. 131). Also, where land is owned by the state, the national authorities allegedly often seize lease payments (Vermeulen and Cotula 2010, p. 910).

When land investments require **labour**, part of the population is brought in either as plantation workers or as contracted farmers (Borras, Kay, et al. 2012, p. 412). According to a World Bank report, “for bulk commodities, it is at the production, rather than the processing stage that employment is generated” (Deininger and Byerlee 2011, p. 38). The amount of labour needed

per hectare varies considerably depending on the crop and the production technologies. It ranges from ten jobs per 1,000 hectares for grain to 700 jobs per 1,000 hectares for sugarcane, when it is irrigated and manually harvested (Deininger and Byerlee 2011, p. 38). This might be part of the reason why, as stated by Daniel (2012, pp. 718f), the extent of employment creation and its impact is so controversial. Liu (2014, p. 12) found in case studies in five countries that the number of jobs created was always smaller than initially announced by the investors, and in many cases decreased over time (see also Deininger and Byerlee 2011, p. xiv; Zoomers and Kaag 2014, p. 216). Critical analysts doubt the employment effects of large-scale investment for structural reasons, as “the primary objective of public and private companies is to increase shareholder value, not to increase employment” (Mathis 2008, p. 10 in Daniel 2012, p. 719; see also Li 2011).

The data are also ambiguous regarding the **type of employment** created. Some argue that large-scale investments need better-educated workers with improved skills, who often cannot be found among the local population (Daniel 2012, p. 719; Kaag and Zoomers 2014, p. 203; Liu 2014, p. 12). But there is also evidence for the opposite to happen, where large plantations require low-skilled labour (see Daniel 2012, p. 718). In these cases, labour opportunities may benefit poor and marginalised groups and “can make a real difference to their lives” (Cotula 2013, p. 135), for example for women formerly depending on the land of their husbands in Ghana and for landless men in Senegal, who appreciated earning a salary (Cotula 2013, p. 137; Maertens and Swinnen 2009). Yet, overall, Li (2011, p. 294) and Zoomers and Kaag (2014, p. 203, 216) consider the benefits of labour opportunities to be fairly small and disappointing. Gibbon (2011, p. 45) analysed literature regarding large-scale plantations in Africa in the twentieth century and found that they offer „low quality jobs“ in terms of salary, health, safety and other conditions.

Some authors highlight **social issues and tensions** that are caused or exposed by land deals. Several case studies in Madagascar found that the emergence of investors triggered competition over the control of land rights among local elites and exacerbated land-related tensions (Burnod et al. 2013, p. 375). Some authors raise the question as to whether former land users are at all interested in receiving new labour opportunities. Such a transformation in livelihood strategies entails not only changes in an economic sense, but also in terms of identity, for example in the case of pastoralists or owners of successful small-scale farms who may not want to give up their lifestyles (Cotula 2013, p. 135; Keeley et al. 2014, p. 3). Cotula (2013, p. 127) warns that one should **not** see the two outcomes – loss of land, but gain in income opportunities – as the **trade-off between land and labour** that it might appear to be at first sight. The problem is “...that the people suffering adverse impacts and those reaping the benefits do not necessarily coincide” (ibid.). Examples of this might be cases where the elderly people who usually control the land lose some of it, but young people get the jobs; or where one village loses land, but people from another village get the jobs (Cotula 2013, p. 135; see also Kaag and Zoomers 2014, p. 203; Liu 2014, p. 13). Keeley et al. (2014, pp. 2f) report that new jobs in Ethiopia have often been taken by workers migrating there from another region, in some cases fostering conflicts with the resident ethnic groups.

The **infrastructure support** promised by investors includes health or education facilities, roads and local markets. It is often argued that investors do not deliver on their promises (e.g. Azadi et al. 2013, pp. 21f; Schoneveld 2013, p. 289). There are no reliable data for the proportion of projects that genuinely provide such benefits. Of the 117 projects in the Land Matrix where information regarding benefits is available at all, around 77% of the projects showed some kind of infrastructure improvement. **Other benefits**, but in smaller numbers, were financial support and capacity building (Anseeuw, Boche, et al. 2012, p. 44). In terms of technology transfer, Zoomers and Kaag (2014, p. 216) indicate disappointing results, while Liu (2014, p. 13) published mixed findings but suspects that it is too early to analyse these effects.

Besides the more or less spatially limited outcomes of single land deals discussed above, there are also worries about **global changes** due to the land rush. One major concern is an overall



restructuring of the agrarian sector in favour of large-scale plantations along with a “wide-ranging global ‘land reform’ – in this case a **regressive land reform** where governments take land from the poor and give (or sell or lease) it to the rich” (White et al. 2012, p. 620).

McMichael (2012, p. 693) fears that “[o]nce the concept of a ‘global commons’ becomes the modus operandi [...] [e]viction of ‘unproductive’ populations becomes the basis of ‘rational planning’ – driven by claims for increased productivity, debt-reduction, export enhancement and rural development“. This would have implications for labour too. Labour requirements for small-scale farming are indicated as around 1’000 per 1,000 hectares in a study in Indonesia (Milieudefensie et al. 2007, in Li 2011, p. 284), compared to 10-700 for large plantations as indicated in the World Bank’s global report (Deininger and Byerlee 2011, p. 39). As a consequence, for certain crops and production systems such an agrarian transition would result in “large ‘surplus populations’ of the dispossessed”<sup>12</sup> (White et al. 2012, p. 624; see also Li 2011) and thus to ‘**de-agrarianisation**’ (Bryceson 1999; Bryceson et al. 2000). Landless people lacking other options to access land would migrate to urban areas, but their labour could not be absorbed by the urban economy (Cotula 2013, p. 131; Li 2011; Zoomers and Kaag 2014, p. 203). This would lead to large increases in the number of impoverished former rural inhabitants, with far-reaching consequences for the whole society.

There are additional concerns about **global food security**. These are based on the argument, presented above, that smallholders are more efficient and more sustainable producers of food than large-scale plantations. Hence, the overall replacement of small-scale with large-scale farms would lead to a decrease in food availability. Yet, on the other hand, the view that small-scale producers could feed the world is contested and needs more differentiated analysis, focusing on food availability as well as questions of access to food for non-farmers (Bernstein 2014, pp. 1051-1053; Woodhouse 2012, p. 791).

A differing type of agrarian transition is portrayed by R. Hall (2011b, p. 206f) for Southern Africa. Hall believes that mega land deals will decrease in number and make way for investments that incorporate smallholders in value chains to their detriment, for example as contract farmers with unfavourable conditions. As a consequence, she is not primarily worried about de-agrarianisation, but instead fears **rural proletarianisation**.

### 1.1.7 Forestry as a specific sector in the global land rush

Large-scale forestry plantations seem to account for a **substantial share** of the global land rush, although the figures are somewhat contested. According to the analysis of the purposes of 980 concluded land deals registered in the Land Matrix in September 2014 (see Figure 2; Nolte 2015, p. 7), land deals for forestry rank in fifth position in terms of the number of projects (making up around 10% of all projects), but second in terms of acquired area, reaching around 22% of the totally acquired area of 37.3 million hectares. Accordingly, it can be concluded that forestry investments are on average comparatively large land deals. However, Schoneveld (2013, p. 30) found in his analysis of around 500 investments in sub-Saharan Africa between 2008 and 2012 that only about 10% of the acquired area was dedicated to wood products.<sup>13</sup>

There is evidence that the area of forest plantations has grown considerably over the last two decades. Between 1990 and 2010, ‘planted forests’ increased by 48.1% (by 32.1% in Africa) to around 264 million hectares worldwide (around 15 million hectares in Africa).<sup>14</sup> This immense

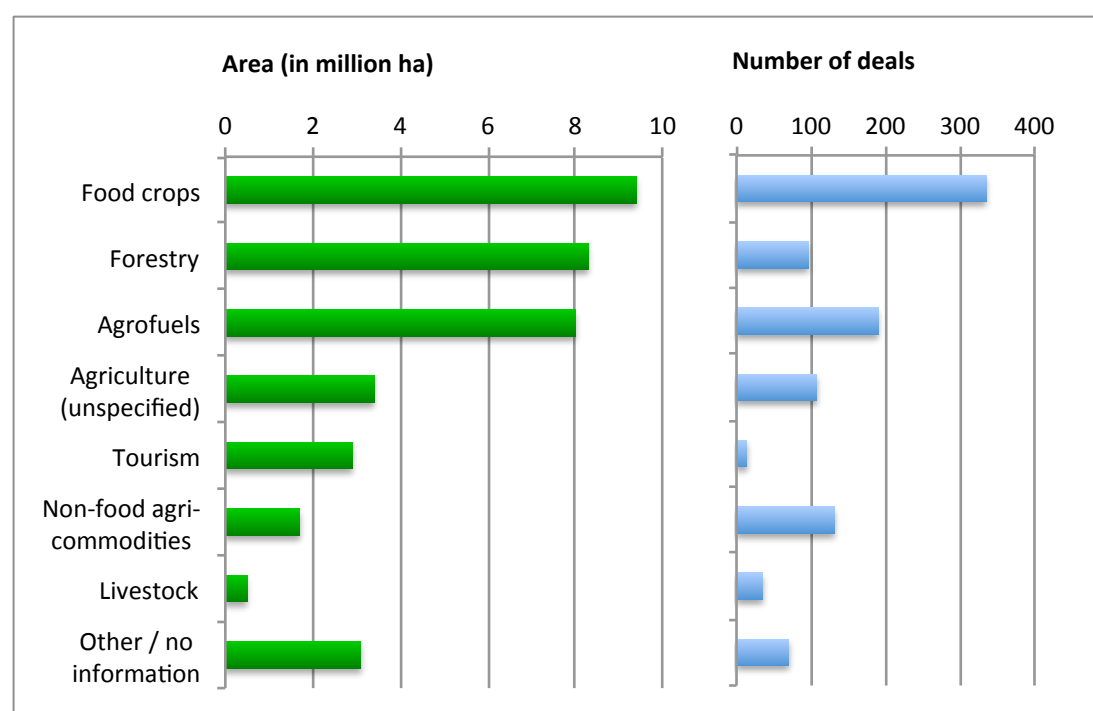
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<sup>12</sup> The term ‘surplus populations’ refers to populations being ‘surplus’ „to capital’s requirements for labour“, not to a general overpopulation (White et al. 2012, p. 625).

<sup>13</sup> The divergence between the figures might be partly explained by the geographical range of the data sets (global vs. sub-Saharan Africa), by the temporal difference and by different definitions of what is considered forestry investment.

<sup>14</sup> Kröger highlights that there are many methodological problems in compiling and comparing tree plantations or ‘planted forests’ due to different conceptualisations, which are also politically influenced. His compilation is based

expansion stems not only from foreign, industrial large-scale plantations, but also from large-scale plantations established by domestic investors or by the government, and small-scale tree plantations run by smallholders or local communities (Kröger 2014, p. 244; see also Gerber 2011; Deininger and Byerlee 2011, p. 12). It is predicted that demand for land for industrial forestry is likely to increase further in the next two decades (Kröger 2012a; Lambin and Meyfroidt 2011). Yet, only a limited number of **scientific studies** on foreign investment in forestry plantations have been conducted so far (Cotula 2012, p. 651; Kröger 2014, p. 236; examples are Bozmoski and Hultman 2010; Gerber and Veuthey 2010; Kröger 2012b). This study partly fills this gap.



**Figure 2: Main purposes of concluded transnational land deals worldwide**, by area and by number of deals; Source: own representation based on Nolte's (2015, p. 7) compilation of data on 980 land deals from the Land Matrix, as of 1 Sep 2014.

Forestry plantations are established for several often combined **purposes**: for producing traditional industrial products such as timber or pulp (often in an integrated mill); for energy generation such as woodchip- and pulp-based diesel; and for conservation and climate change mitigation initiatives.<sup>15</sup> In the latter case, trees are planted as providers of carbon sequestration certificates that can be sold on the global market for greenhouse gas emission reductions. Such plantations are often established under development cooperation agendas (Overbeek et al. 2012), e.g. as part of the REDD+ initiative (Reducing Emissions from Deforestation and Forest Degradation 'plus' conservation, sustainable management of forests and enhancement of forest carbon stocks)<sup>16</sup> (Kröger 2014, pp. 236, 243). As promoters of climate change mitigation, tree plantations are part of the emerging green economy (Kröger 2014, p. 236). They are also

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on data by the FAO, which applies a quite broad definition of 'planted forests' and uses statistical data provided by national governments (Kröger 2014, p. 240f).

<sup>15</sup> The term 'forestry plantation' has to be distinguished from 'tree plantation'. The latter also includes rubber and palm oil plantations (Gerber 2011).

<sup>16</sup> The conceptualisation of tree plantations as carbon sinks as promoted by companies is contested. Critics argue that the carbon is not fixed for a long enough time in the trees, as the plantations are often producers of paper and cardboard, which is soon consumed and burned (Kröger 2014, p. 243).

labelled as ‘green grabs’, which are estimated to be increasing worldwide (Fairhead et al. 2012, p. 238; see also Corson et al. 2013). When plantations are established for combined purposes, the trees can be considered as flex crops (see Section 1.1.1). According to Kröger (2014, p. 236) ‘flex trees’ will probably contribute to a future increase in tree planting.



**Figure 3:** Sign-board of forestry company in Tanzania with an appeal to prevent fires; photo by M. Locher (2011).

Compared to other crops, forestry plantations are long-term endeavours because it takes at least 10-15 years until the trees can be harvested. At the same time, they are highly **vulnerable investments**, prone to accidental or deliberate fires and logging. The large plantations are difficult to protect (Kröger 2014, p. 245). Fairbairn (2013, p. 338) for example reports uncontrolled fires in forest plantations as a local means of resistance in Mozambique. Therefore, I argue, forestry companies depend to a greater extent on the acceptance of the local population than other companies. Applying Corporate Social Responsibility is a worthwhile strategy for these companies, as they intend to gain the local population’s goodwill in order to reduce their risks (see Figure 3). This might be even more relevant for investors like the examined ones (see Section 5) that need to observe international social and environmental standards, either to engage in the trade of carbon credits or to

obtain specific certificates. I therefore assume that forestry plantations have potentially more favourable outcomes for local people than investments in other sectors.

### 1.1.8 Summing up: Knowledge and knowledge gaps on the global land rush

Global overviews on the land deal situation remain rather vague estimates due to the intransparent nature of single land deals. Further, there is no standard definition of the global land rush. However, a fast growing body of literature from varying perspectives has been coming up with findings on the different dynamics, processes and actors that make up the phenomenon. Yet, the quality of literature must be carefully assessed (Oya 2013b, p. 1536).

On the investment side of the global land rush, a broad range of mainly private actors is engaged, partly supported by governments and international organisations. Proponents of Marxist perspectives have provided compelling explanations for investors’ increased demand for land, ascribing the commonly named drivers of the land rush (e.g. food, fuel, finance) to a fundamental crisis of the capitalist economy. Further, the outline of discourses on different agrarian pathways and the powerful neo-liberal development model provides a better understanding of the potential motives of host country governments that welcome land investments and of supportive international donors that promote favourable business conditions. Yet, framing the land rush in such global economic processes and discourses tends to underestimate the influence of institutions and the agency of specific actors, particularly in the states that host land deals (see also Smalley and Corbera 2012, pp. 1041f).

In the target countries, the land deals are to a certain extent shaped by investment policies – influenced by the above mentioned development discourses – and by land laws; African laws vary considerably regarding the recognition of customary land rights and local people’s decision-making. Strong regulations were found to be necessary but by far not sufficient to protect local people’s land rights. In order to understand the processes and outcomes of land deals, it is equally important to focus on involved stakeholders and their relations among each other. Land deals are often pictured as processes of investors allied with domestic elites against local people, while local people are portrayed as homogenous groups with the same stakes. There has not yet been sufficient research into the crucial role and motives of different actors among these groups in negotiating or regulating land deals. More in-depth case studies are needed to provide a nuanced analysis of the stakeholders and their interaction (Edelman 2013; Evers et al. 2013a, p. 4; R. Hall 2011b; Smalley and Corbera 2012, p. 1042).

When conceptualizing the global land rush and its outcomes, one should be careful to avoid over-simplified representations of the phenomenon as either “providing much-needed capital and technology for third world agricultural production, food security and employment” or as “neo-colonial scrambles for land and resources conducted by predatory investors at the expense of marginal populations abroad” (Wolford et al. 2013, p. 191f; see also R. Hall 2011, p. 195; White et al. 2012, p. 638). Some studies from Marxist perspectives run the risk of overemphasising the negative effects of the global land rush. As Borras and Franco (2012, p. 47, emphasis in the original) state: “It is often *taken for granted*, rather than empirically demonstrated, that such mega land deals are ‘bad’ for the ‘local people and communities’ and are, or ought to be, opposed by them.” Research so far reports a range of economic and social impacts on local people. Yet the outcomes of large-scale investment are not clear overall. Studies often offer an overview but do not provide a detailed and differentiated view of intra-community differences. Also, local people’s perspectives are rarely portrayed. Context-specific evaluation is needed in order to bring up a more differentiated picture of the land rush’s outcomes and to bring in local views (Edelman et al. 2013, p. 1528; White et al. 2012, p. 633; Woodhouse 2012, p. 791). In Oya’s (2013b, p. 1536) words: “there is no shortcut for good quality evidence”.

Finally, little attention has been paid to foreign investment in forestry plantations yet, despite its global reach and growing relevance in light of energy and climate concerns (Cotula 2012, p. 651; Kröger 2014, p. 236). Further research on forestry investments is important not only considering the pivotal share they account for in the global land rush, but also because of their specific characteristics due to their slow growing and vulnerable produce, making them particularly dependent on local goodwill and thus potentially more positive examples of land deals compared to others.

## 1.2 Research objectives and research questions

Rural livelihoods are changing in many areas due to population growth, climate change, resulting pressure on natural resources and economic globalisation processes. Non-land-based livelihood strategies are gaining in importance. However, many rural livelihoods are still mainly based on access to land and land-based resources (Bah et al. 2003; Bryceson 2002; IAASTD 2009b; Östberg and Sledgers 2010; Rauch 2014; Rigg 2006). In this regard, transnational land deals may have a disruptive influence on rural livelihoods.

As demonstrated in the previous sub-sections, the literature on the global land rush lacks comprehensive evidence on the details of land deal processes, including the role of actors at different levels and different groups within communities. Furthermore, the overall outcomes of large-scale investment are not clear, and context-specific evaluation is needed. Finally, the views of local people are often absent from research. These shortcomings call for more in-

depth case studies. Evidence on cases of land deals for forestry plantations is lacking in particular.

This study therefore aims to contribute to a more nuanced picture of land acquisition procedures and the implications of transnational land deals for local livelihoods. It does this while also taking account of social differentiation among rural people and articulating their perspectives, in a case study on forestry investments. In a broader sense, I would like this PhD thesis to contribute to the understanding of transforming rural livelihoods in a context of a globalised economy and increasing pressure on land and land-based resources (see also Rauch et al. 2014).

On this basis, I formulated the following three research questions and sub-questions at the outset of this study. A fourth, methodological question was added during the research process when I faced challenges to acquire reliable information on the land deal situation in Tanzania.

1. *How do land acquisition processes take place?*

- What institutions (and at what scales) govern the process when an interested foreign investor seeks to acquire land?
- Which actors and social groups are included or excluded from the decision-making process?
- What power relations shape the decision-making process?
- Whose land is transferred to investors?
- Which social groups have to give up their land use rights?
- Who is compensated for land deals, for what exactly, and how? Who is not compensated?

Research question 1 is addressed in Research Papers I, II and III.

2. *What are the (immediate) implications of land deals and related investments for local livelihoods?*

- What are the implications in terms of lost or reduced access to land and land-based resources?
- What are the implications in terms of compensation for land and land-related resources?
- What are the implications in terms of new labour opportunities and potential benefits (such as public infrastructure) assured by investors?
- Which social groups benefit from opportunities such as new income possibilities and public infrastructure and which do not?

Research question 2 is addressed in Research Papers I and II.

3. *How do local people perceive foreign land investments?*

- Who has which expectations and concerns vis-à-vis foreign land investments?
- How do different social groups see their role in land transition processes?
- How do local people value the implications of foreign land investments?

Research question 3 is addressed in Research Paper I and to a limited extent in Research Paper II.

4. *How are data regarding the global land rush (re)produced and reported?*

- What are the challenges for data collection and data generation?
- What are the practices of data reproduction and reporting?
- What are the consequences of these challenges and practices for the knowledge about the global land rush?

Research question 4 is addressed in Research Paper IV.

The following sections display at which stages of field research the research questions were tackled, and present in more detail the conceptual approaches and methods that were employed to answer them. For an overview see Table 1.

**Table 1: Overview on research questions, approaches, methods and papers**

		Case study*	Research questions			
			1 Pro-cesses	2 Impli-cations	3 Per-ceptions	4 Data
Conceptual approaches						
Critical Livelihoods Perspective			(x)	x	x	
Property and Legal Pluralism			x	(x)	(x)	
Theory of access			x			
Bargaining model			x			
Methods for data generation						
Semi-structured interviews	- with local inhabitants		x	x	x	
	- with key persons	x	x	x	x	
	- with investors		x	x		x
Expert interviews	- explorative	x	x	x		x
	- systematizing		x			
	- theory-generating		(x)			
Group discussions		(x)	(x)	(x)	x	
Participatory mapping			x			
Participatory observation		x	(x)	(x)		
Review of documents	- legal documents		x			
	- reports on land deals	x				x
	- investors' webpages	x				x
Research Papers						
Paper I			x	x	x	
Paper II			x	x	(x)	
Paper III			x			
Paper IV						x

\* Selection of case studies and background information to case study sites

## 1.3 Research design

### 1.3.1 Framework of the research project: the NCCR North-South

The thesis was embedded in the interdisciplinary research programme ‘Swiss National Centre of Competence in Research North-South’ (NCCR North-South) with the subtitle ‘Research Partnerships for Sustainable Development’. The twelve-year programme was funded by the Swiss National Science Foundation (SNSF) and the Swiss Agency for Development and Cooperation (SDC), and ended in June 2014. It consisted of different interlinked research projects and built up a network of research partners in over 40 countries (NCCR North-South 2014).

This PhD study was associated with the Research Project 2 on livelihood futures of marginalised groups in resource-scarce areas in Pakistan, Nepal and Tanzania (Shahbaz and



Sharma 2009). In Tanzania, the NCCR North-South had established long-term collaboration with the University of Dar es Salaam and with the Sokoine University of Agriculture (SUA) in Morogoro. The formal and informal collaboration with several NCCR North-South members in Tanzania and elsewhere formed an important basis for the fieldwork of this study. My association with SUA was a prerequisite for obtaining a Tanzanian research permit. Just as important as the institutional tie was the informal support I received in the form of scientific exchange, sharing networks and practical information.

### 1.3.2 Methodological approach and overall research process

I chose a (mainly) qualitative research approach for this thesis, in line with the research questions and the employed conceptual approaches. In terms of epistemology, this study can be positioned in the realistic paradigm as it was understood by March and Furlong (2002), which, to be brief, can be seen as between the positivist and interpretist positions. In line with the central claim of openness in all respects of a qualitative research process (Flick et al. 2008, pp. 22ff; Meier Kruker and Rauh 2005, p. 14) I applied an iterative research design (Flick 2007, pp. 122ff). The whole research process was circular, in the sense that the literature review, data collection, data analysis and publishing results were conducted alternately. I also kept the research setting flexible, in the sense that the definition of the case studies – and thus the focus of the research – were defined on the basis of new information acquired and analysed during the research process. The research questions were also slightly refined, and an extra one was formulated during the process.

While the livelihoods perspective was chosen in the beginning, the other conceptual approaches were selected after first analysis of the data. In this rather new research field, it helped to use an inductive procedure so that I could be open to the empirical findings during the data's generation and their first analysis. The overall research approach was qualitative. However, the methodical approaches for data generation and analysis differed slightly depending on the research question; hence, also the degree of interpretist vs. positivist position varied (see also Section 3.4). The fourth research question was tackled through a detailed chronological compilation of my own data and data from an extensive literature review. Comparing primary data with subsequent publications allowed me to reconstruct practices of data reproduction and their consequences.

### 1.3.3 Field visits, stages of field research and resulting publications

The empirical research process involved various trips to Tanzania, and can be divided into three different stages in terms of content.

I conducted **five field visits** to Tanzania between 2009 and 2013. They resulted in a total of 23 weeks of field work (see Figure 4). An initial explorative field visit served mainly to collect first information, including some unpublished reports about the land deal situation in Tanzania, and to start establishing contacts, both within and outside the NCCR North-South network. More extensive field visits, dedicated to the three main stages of field research, were conducted during 2010 and 2011. Lastly, in early 2013, I travelled to Tanzania to present my research at a NCCR North-South workshop, and took the opportunity to conduct a few final interviews with key informants and to share my preliminary findings with the Tanzania Investment Centre.

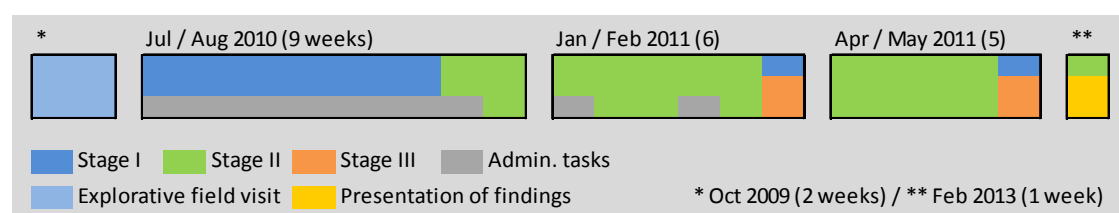


Figure 4: Field visits with stages of field research and administrative tasks

I spent a great deal of time on administrative issues, including repeated registration as a research associate at the SUA, obtaining a temporary Tanzanian residence permit, and getting research clearances for different districts, along with recommendation letters for specific villages.

I did my empirical research in **three main stages** (see Table 2).

Stage I – National setting and land deal situation: I initially pursued two broad aims. I sought to gain a deeper understanding of the legal procedures and relevant institutional actors during land acquisitions by foreign investors. Parallel to that, I aimed to gain an overview of the number and types of foreign land deals in Tanzania and the accompanying debates so that I might choose the case studies. The second task proved to be time-consuming, as only limited information was available and it was often of poor quality (see Section 3.1). The gap in reliable data that I discovered led to the formulation of a fourth research question, the publication of a working paper (Locher and Sulle 2013) and thence to Research Paper IV.

Stage II – Case studies: During the second and main stage of field research, I visited the two case study areas three times (case study A) or twice (case study B), respectively. My research assistants (see Section 3.4.4) and I focused on the first three research questions. The data of this research resulted in the publication of Papers I-III.

Stage III – Insights in attitudes of district officials in additional districts: Realising that officials (and politicians) play an important role in the land deal processes, I became interested in their varying practices, particularly the underlying attitudes towards land deals. This specific sub-question of the first main research question was investigated in six districts as well as the case study districts. I could only incorporate the results in this PhD thesis to a limited extent. However, the insights I gained helped me to sharpen my understanding of the district officials' influence on the decision-making process, and were taken up in Research Papers I and II.

**Table 2: Stages of field research: aims and outputs**

Stage of field research	Aim / addressed research question	Research paper
<u>Stage I</u> National setting and land deal situation	<ul style="list-style-type: none"> <li>• Overview on land deal situation in Tanzania</li> <li>• Selection of case studies</li> <li>• Research question 4</li> <li>• Understanding legal and institutional setting (contribution to research question 1)</li> </ul>	IV  (in addition: Locher and Sulle 2013)
<u>Stage II</u> Case studies in Kilolo and Pangani districts	<ul style="list-style-type: none"> <li>• Research question 1</li> <li>• Research question 2</li> <li>• Research question 3</li> </ul>	I, II, III
<u>Stage III</u> Insights into attitudes of officials in additional six districts	<ul style="list-style-type: none"> <li>• Contribution to research question 1</li> </ul>	Contribution to I, II, III



## 2 Conceptual approaches and perspectives

### 2.1 Personal perspective and assumptions

In this PhD research I tried to approach the field without having any major theoretical frameworks in mind in order to be open to different findings and to base my analysis largely on empirical data. Although I have some sympathy for criticism of capitalism, I did not want to conduct my research based on Marxist approaches and related assumptions (as outlined in section 1.1.3). Of course, I am aware that – like all humans and hence all researchers – I am not free of certain assumptions about my research topic. I was (and to a more limited extent I still am) convinced that land deals could and can bring both negative and positive effects and that they might produce winners and losers among the rural population too. I started from the point of view that local people in a given area might not necessarily disapprove of investors, and that a smaller or larger group of local inhabitants might welcome them. In other words, I thought that the overall picture in this critical debate was not black or white, but varied depending on the context and perspective and merited careful scrutiny. However, my focus was always on rural people, assuming that they are those most affected by land deals; I was generally convinced that inhabitants of a certain region should have priority when there are decisions to be made about developments in their area.

My position has influenced my choice of conceptual approach. I employed a selection of approaches in a rather eclectic way. By combining the strengths of the different approaches, I gave consideration to the various aspects of the research topic. The critical livelihoods perspective provides an actor-oriented position and sharpened my perception of local perspectives. The property concept and the legal pluralism perspective helped me to grasp land tenure and how it is embedded in social organisation. The theory of access and the bargaining power model were useful for understanding processes and power relations that are relevant for access to, and appropriation of, land. The conceptual approaches, the way they are interlinked or can be related to each other and their relevance in this study are described in more detail in the following sections. The use of the different approaches for the different research questions is displayed in Table 1.

### 2.2 Critical livelihoods perspective

*"The appeal is simple: look at the real world, and try and understand things from local perspectives."* (Scoones 2009, p. 172)

As an overall approach to this study, I adopted a critical livelihoods perspective (Geiser et al. 2011; Scoones 2009). Livelihoods approaches – also labelled sustainable livelihood approaches – were stimulated by Conway and Chambers two decades ago (Chambers and Conway 1992, in De Haan and Zoomers 2005, p. 27) and have been developed by different authors since. Carney provides a common definition of livelihoods (Carney et al. 1998, p. 2, in De Haan 2012, p. 347) as follows: "A livelihood system comprises the capabilities, assets (including both material and social resources) and activities required for a means of living".

Livelihood approaches take an **actor-oriented position** – an emic perspective – and highlight the active role of poor people instead of seeing them as passive victims. They focus on the micro level, mainly on households and individuals (De Haan and Zoomers 2005, p. 28). Livelihood approaches can be seen as a reaction to the structural perspectives that prevailed until the 1980s, including *dependencia*, neo-Marxism and modernisation theories. Their appeal – "look at the real world, and try and understand things from local perspectives" (Scoones 2009, p. 172) – has called for acknowledging diversity in complex livelihood strategies. It has thus challenged single-sector approaches to multifaceted rural development problems. The

introduction of the British Department for International Development's (DfID) Sustainable Livelihoods Framework (SLF) as an analytical tool for research and practice resulted in the approach being widely adopted (see De Haan 2012; Geiser et al. 2011). Designed to contribute to problem mitigation, the SLF puts the emphasis on poor people's assets (often called 'capitals') and how development interventions could improve these assets.

Livelihood studies were strongly criticised for ignoring structures, politics and power (De Haan and Zoomers 2005; Geiser et al. 2011; Scoones 2009). Although most livelihood frameworks contain information about 'transforming structures and processes' or 'policies, institutions and processes', and some studies have indeed included them in their analysis and discussion, the critics state that these contributions have been marginal. Most studies tend to focus on poor people's assets without analysing how institutions negotiate access to assets (Shahbaz et al. 2010). This tendency is termed the "pentagon trap" by a group of NCCR North-South researchers who gained considerable experience in working with the DfID-inspired livelihoods approach (Geiser et al. 2011). Combined with the SLF's "normative trap" of focusing on people's own views of wellbeing and the causes of poverty, researchers might run the risk of neglecting wider issues of power (Geiser et al. 2011). Thus the major challenges to the livelihoods approach are seen as the importance of power in questions of access (De Haan and Zoomers 2005, pp. 27f) and in „the need to inject a more thorough-going political analysis into the centre of livelihoods perspectives“ (Scoones 2009, p. 171). De Haan (2012), however, argues that, more recently, livelihood research has managed to integrate the analysis of power relations in a meaningful way, by combining the livelihoods perspective with other approaches that conceptualise power relations, for example by using the environmental entitlements approach (Leach et al. 1999; see also De Haan 2012, p. 349) or the notion of political arena (De Haan and Kamanzi 2011; Olivier de Sardan 2005; see also De Haan 2012, pp. 350f).

This PhD study adopted the actor-oriented viewpoint that highlights the active role of poor people. By focusing on the views, experiences and daily practices of poor people, I aimed to bring in the perspective of those most affected by land deals. As recommended by Geiser et al. (2011) and De Haan (2012), I complemented the livelihoods perspective by employing other conceptual approaches in order to analyse power issues. Specific approaches were applied to tackle questions of access to land and related institutions, as well as (negotiation) power of different stakeholders. In an attempt not to impose artificial, pre-defined categories on complex realities (Scoones 2009, p. 172), the approaches were chosen based on insights that I gained during the research process.

In applying a critical livelihoods perspective to a study on the global land rush, I also address Scoones' concern (2009, p. 181f) that this perspective has failed to engage with global processes and their influence on local livelihoods, such as economic globalisation and questions about agrarian change. The livelihoods perspective was relevant for all research questions focusing on the case studies (research questions 1-3) and for the related publications (Research Papers I to III), but most importantly for Paper I, which highlights local people's views on the land deals and investment projects I examine (research question 3).

## **2.3 Analytical concept of property and legal pluralism perspective**

Access to livelihood assets such as land is negotiated through institutions, understood in North's (1990, p. 3) sense as "rules of the game in a society", including norms, rules and regulations that structure everyday life. Property is a central institution regarding land. In order to capture property and land tenure conceptually, I used an analytical framework on property and the legal pluralism perspective. They were particularly helpful for the analyses in Papers II and III with a focus on (complex) land rights and related conflicts during the land deal processes.

F. and K. von Benda-Beckmann and Wiber describe **property** not as a specific right or relation, such as private or collective ownership, but as a broad concept that "concerns the ways in which the relations between society's members with respect to valuables are given form and significance" (Benda-Beckmann et al. 2006, p. 14). The authors define three major elements in relation to property, namely: (a) the social unit that can hold rights and obligations; (b) the (constructed) property objects; and (c) the different sets of rights and obligations with respect to such objects.

Rights can be broadly grouped into two categories, namely *use rights* (the rights to access and use or exploit economically a resource) and *control rights* (the rights to manage a resource, to exclude others from using it, or to alienate it to others through sale, rental or gift) (Benda-Beckmann et al. 2006; Meinzen-Dick and Pradhan 2001, p. 11). In many societies, land 'ownership' bundles a set of rights into one social unit, i.e. a landowner or a group of landowners hold several control rights and usually also use rights over a given land slot. Thus property rights are better understood as bundles of rights (or "web of interests", see Meinzen-Dick and Mwangi 2009). Rights may also be delegated. A landowner for example can assign user rights to a tenant, who might in turn pass (part of) them on to a sharecropper (Benda-Beckmann et al. 2006, pp. 15, 20).

In order to get a better analytical grasp of property regimes, it is helpful to distinguish four "layers of social organization" (ibid., pp. 15f) in which property is expressed:

- Layer (1): Cultural ideals and ideologies (e.g. neo-liberal concepts of private property, socialist concepts of common property);
- Layer (2): Legal regulations; concrete rules, usually based on cultural ideals and ideologies (e.g. state law or customary law);
- Layer (3): Social relationships (e.g. between landowner and tenant);
- Layer (4): Social practices or daily interactions (e.g. cropping, fencing or inheriting land).

Since property systems evolve over time, the layers of such a legal order are not always fully coherent. The four layers are mutually interdependent and can influence each other. For example, social practices may reflect and reproduce ideologies regarding property, or they may negotiate social relationships and eventually transform related laws. It is important to notice that social relationships are often multifunctional and reflect local power relations shaped by kinship, economic situation, political dependencies or other influential aspects. Consequently, property is always seen as embedded in a specific social and political context, encompassing a variety of different arrangements at different levels (Benda-Beckmann et al. 2006, pp. 14-23).

In any social context, different legal regimes may coexist at the same time, each of them based on legislations such as statutory law, customary law or religious law, supported by their respective sets of cultural values, and determining property relationships and practices. These systems may coexist peacefully or in open conflict, and may influence each other. For example, customary law can adapt partly to statutory law, or statutory law can take up elements of religious law. Such coexistence and interaction of legal systems is referred to as **legal pluralism** (Meinzen-Dick and Pradhan 2001, p. 11).

In the context of legal pluralism, people may refer to a repertoire of property ideologies and legal regulations to justify and support their claims (ibid.). However, "[i]t is not sufficient to assert claims to the resource; unless claims are accepted by a larger collectivity than the claimants they are not considered legitimate. (...) Rights are only as strong as the institutions or collectivity that stands behind them" (ibid.). The faith of claims also depends upon the extent to which they are congruent with the dominant legal order. If claims do not meet the standards of the leading paradigm or property-related ideology, they will hardly be successful (Griffiths 2011, p. 175). Griffiths (ibid.) states that "...with the rise of the nation-state, a particular paradigm of law became predominant, one in which state law acquired jurisdiction and took precedence over other forms of ordering within a territorially, bounded, geographic

space”. This legal order, called positivist or legal centralist paradigm, is predominant in Western culture.

The legal pluralism perspective was useful in the analysis of the Tanzanian land law and its implementation in a context where customary legal orders prevail, i.e. the perspective was employed to address a part of research question 1, namely its focus on institutions that shape land deal processes (see Research Papers II and III). The legal centralist paradigm – predominant in Western countries, where many investors come from – would not be in line with the livelihoods approach with its focus on local views. Accordingly, in this study, state law is not necessarily seen as the (only) legitimate one.

## 2.4 Theory of access

As demonstrated above, property rights do not simply derive from law, but are embedded in a social context and should be understood “as negotiated outcomes” (Meinzen-Dick and Pradhan 2001, p. 10). In order to gain a better grasp of the issue of power in this broader context, I employed the theory of access and its related framework by Ribot and Peluso (2003). It illustrates that a focus on property alone would be too narrow when analysing access to natural resources.

Ribot and Peluso (2003) theorise access to resources, or more precisely how people gain, maintain and control access to certain resources, or are excluded from it. Access is defined as “the *ability* to benefit from things” (ibid, p. 153) – drawing upon the definition of property as “the *right* to benefit from things” (ibid.). Access is about all possible means by which people benefit from resources (ibid, p. 156). Property rights are just one of these means. Ability, in Ribot and Peluso’s definition of access is akin to power (ibid, p. 155). The authors define power as the capacity of actors to affect others, and as emergent from people. With the access theory, “[b]y focusing on *ability*, rather than *rights* as in property theory, this formulation brings attention to a wider range of social relationships that can constrain or enable people to benefit from resources without focusing on property relations alone” (ibid, p. 154, emphasis in original). Thus access analysis can also help one to understand situations where people benefit from resources without having rights – based on whatever legal order – to them.<sup>17</sup>

Access is constituted by bundles of powers that people or organisations hold or can draw upon. The power strands – also known as ‘access mechanisms’ – are means, processes and relations that affect people’s ability to gain, maintain and control access. The power strands presented by Ribot and Peluso (2003, pp. 161–172) vary broadly and include among others access sanctioned by legal frames, i.e. property regulations (‘rights-based access’), access to finances and equipment that allow for example the extraction of benefits from land (‘access to capital’), the ability to shape discourses that influence entire frameworks of access (‘access to knowledge’), and ‘social identity’ such as gender or ethnicity, which affects the distribution of benefits. The different power strands often intertwine.

Ribot and Peluso’s framework is a helpful guide for empirically grounded analysis of power issues related to access to land. The bundles of powers can be adapted to specific situations (see also Smalley and Corbera 2012, Fairbairn 2012). This was done in this study in order to show how particular strands of powers were influential when the investors gained access to land, i.e. the framework was used to tackle power relations and exclusion in the decision-making process (see research question 1, Research Paper I).

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<sup>17</sup> On the other hand, there are also situations where people have rights to a resource, but cannot access it, i.e. they cannot benefit from it due to certain limitations (e.g. access to labour) (Ribot and Peluso 2003, p. 160).

## 2.5 A bargaining power model

While the access theory provides a good overview on all sorts of possible means by which people gain access to natural resources, it remains rather unspecific about how to analyse the significance of power strands such as e.g. ‘access to capital’ and ‘access to labour opportunities’ (Ribot and Peluso 2003, pp. 165-167) in concrete situations. For my analysis of negotiations of the land deals (i.e. for part of research question 1), I thus used elements of the bargaining power model developed by Yan and Gray (1994). The model integrates findings from bargaining theory (Bacharach and Lawler 1984, in Yan and Gray 1994, p. 1481) and resource dependence theory (J. Pfeffer and Salancik 1978, in Yan and Gray 1994, p. 1481). I applied the model to look at the relative bargaining power of parties in business relationships. While it was developed to analyse international joint ventures, which is technically speaking not the case in the investment projects I analysed in Tanzania, I argue it may nonetheless be applied to the case studies in this research. Since the forestry investments require long-term collaboration, or at least acceptance between forestry companies and local people, there exists a similar situation to the one described by the authors.

The model distinguishes between two types of bargaining power elements. First, context-based elements refer to the stakes of involved bargainers and their alternatives to the deal; a stake is the extent of a bargainer's dependence on the planned joint project and its outcomes. The higher a partner's stake, the weaker his or her bargaining power. On the other hand, the more alternatives available to bargainers, the smaller is their dependence on the other partner and the higher their bargaining power (Bacharach and Lawler 1984, in Yan and Gray 1994, p. 1481). Second, resource-based components are resources and capabilities committed by the parties to the cooperative relationship such as for example land, money or labour. Bargainers committing crucial resources that are difficult for the other party to replace have great power in the negotiations, as they can use them as leverage (Pfeffer and Salancik 1978, in Yan and Gray 1994, p. 1481).

While I found the access theory helpful for unravelling the powers that shape the land deal decisions in the case studies, the bargaining model was useful for analysing actual bargaining situations, such as compensation negotiations between the investors and the local population. Thus the combination of the bargaining model and the access theory allowed me to analyse the broad picture of power relations in the land deal processes, as presented in Research Paper I.

## 3 Methodology

### 3.1 Literature review: fast-accruing empirical evidence

In 2009, at the start of this research project, very little information was available on the global land rush. The existing literature was to a large extent provided by non-scientific authors and organisations (for the quality of available data see Research Paper IV). I derived my first insights on Tanzania mainly from a report by an international policy research organisation (Sulle and Nelson 2009). However, it focused on biofuel projects, which attracted most interest in that time. The limited information meant that I had to spend considerable time on gaining an idea of the land deal situation in Tanzania and beyond, and identifying potential case studies (stage I of field research, see Section 1.3.3).

Whereas the scarce information led to some additional work – yet also opportunities in terms of research gaps – at the beginning, the situation changed completely during the following years. The rapid rise in large-scale land acquisitions led to a ‘gold-rush-like’ phenomenon – termed “hype” by Kaag and Zoomers (2014) – in academia, independent research organisations and other NGOs. The topic gained a great deal of media attention; newsletters were created and several conferences were held specifically on this issue<sup>18</sup>. Further, there were different attempts to gain and present a global overview of the deals, first in reports compiled on the basis of media coverage (e.g. Friies and Reenberg 2010; von Braun and Meinzen-Dick 2009), later in more sophisticated, newly established databases (GRAIN 2012; Land Matrix 2015). A flood of scientific contributions, including several special issues in notable journals, has come since 2011 and has not abated to date.

According to this PhD study’s circular research design, reading relevant literature was a constant task. However, coping with the “literature rush” (Oya 2013a) and the fast-accruing (scientific) knowledge was a major challenge during the second half of the research project. For the sake of finalizing this study, the coverage of related literature had to be limited and review stopped early 2014, with some exceptions.

### 3.2 Selection of case studies

Research about land deals has so far shed light on projects that have primarily had negative impacts on local livelihoods. This may also have been the consequence of a bias in the selection of case studies, as cases resulting in conflicts have arguably attracted more public attention through media and NGO reports, and were therefore more visible to researchers as well. Assuming that more favourable examples of land investments also exist (Cotula et al. 2008, p. 26 for lack of research on promising business models for biofuels), I have deliberately chosen a country and an investment sector that I presumed would show more positive outcomes for the local population. Unlike other target countries of land investments, Tanzania supposedly has abundant land and a progressive land law in terms of respecting local land

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<sup>18</sup> Conferences on the phenomenon included the following: NVAS International Conference ‘Africa for Sale’ (organised by the Netherlands African Studies Association, in Groningen, the Netherlands, in 2010); the Land Deal Politics Initiative Conferences I (at University of Sussex, Brighton, UK, in 2011) and II (at Cornell University, New York, US, in 2012); International Workshop on Large-scale Land Acquisitions (at GIGA, Hamburg, Germany, 2012); Land Rush or Development by Investment? The ‘Land Grab’ Debate in Africa (organised by the Swiss Society for African Studies, at the University of Berne, Switzerland, in 2013); and the Conference on Agricultural Investment, Gender and Land in Africa (organised by the Future Agricultures Consortium in Cape Town, South Africa, in 2014). In addition, there were specific panels at several major conferences, such as ECAS 2013 (5th European Conference on African Studies) at ISCTE, Lisbon, Portugal, and at the Annual World Bank Conferences on Land and Poverty in Washington D.C., US.



rights (see Section 4.1.1). As I highlighted in Section 1.1.7, it can be assumed that forestry plantations might have more favourable outcomes for local people than investments in other sectors.

The choice of case studies for this research can be described as a “critical case sampling” (Patton 1990, pp. 174–176) if considering the land laws of host countries and the investors’ intended relationship with the local population as key dimensions in determining the effects of land deals. Critical case sampling allows one to draw conclusions on other cases based on logical generalisations, in the sense of “if it happens there, it will happen anywhere” (ibid., p. 174); for this study this is taken to mean that if outcomes are negative even under these comparatively conducive conditions, they are most probably similar or worse in cases with less favourable conditions.

I expected a comparison of two case studies in Tanzania to lead to a broader understanding of the issues that influence the process of land transfer and its potential implications. I based my selection of case studies on several criteria. To address the main research questions I intended to identify investment projects whose land acquisition processes were still ongoing or only recently completed. Both the projects I chose meet this requirement. The two projects differ in terms of the type of land acquired (individual vs. communal land holding) and the kind of compensation offered (in cash vs. in kind). Furthermore, as they are located in different districts and regions, several authorities were involved in the land transfer process, which is relevant when one considers the important role district officials and politicians play in the whole process. The selected sites have different characteristics in terms of natural resources and climatic conditions, the local availability of (arable) land, and their populations. See Section 5 for a detailed portrait of the case studies.

### 3.3 Data generation and access to the field

#### 3.3.1 Data generation through qualitative methods

A combination of qualitative methods was used to tackle the different research questions (Flick 2004; see Table 1). For a detailed compilation of the generated empirical data and additional sources I used in this study see Box 1.

##### *Expert interviews*

I conducted expert interviews with representatives of national government, civil society organisations and academia in research stage I, and with regional and district government officials in research stages II and III. They form an important part of the empirical data in this thesis. Expert interviews are frequently used in social research, but they are not often reflected methodologically (Meuser and Nagel 2009).

In this study, experts are defined on the basis of Meuser and Nagel (2009, p. 470) as persons who bear in some ways responsibility for certain societal issues (often as professionals) and who have – based on that responsibility – access to specific knowledge about those issues<sup>19</sup>. Bogner and Menz (2002, pp. 36–39, 43–45) differentiate between three types of expert interviews, focusing on different types of expertise. I used:

- *Explorative expert interviews* at the beginning of research stages I and II in order to gain first insights into the land deal situation in Tanzania and the case studies. In this context, I mainly focused on the experts’ *process knowledge* [in German: *Prozesswissen*]. Process knowledge is defined as practical know-how gained in daily routine work and knowledge about events and constellations in the own working context;

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<sup>19</sup> For an in-depth discussion of the definition of experts see Bogner and Menz (2002, pp. 39–47).

- *Systematising expert interviews* [systematisierende Experteninterviews] in research stage I, when one of the guiding questions was: ‘how are land deals (supposed to be) processed?’ Systematising interviews aim to generate a comparable set of data to gain a systematic overview of a certain question. For my research, I focused on both the experts’ process knowledge (i.e. knowhow about actual land deal practices) and their *technical knowledge* [technisches Wissen]. The latter is defined as specialised know-how that one can learn, for example, during one’s vocational training or studies (i.e. in this context knowledge of the Tanzanian legal framework for land deals);
- *Theory-generating expert interviews* [theoriegenerierende Experteninterviews], though only to a limited extent. This interview type focuses on the *interpretative knowledge* [Deutungswissen], i.e. it tries to reconstruct the experts’ implicit maxims and subjective guidelines for actions and decisions in their professional field. I applied this type of interview in research stage III, when I set out to understand the district officials’ subjective perspectives and thus the underlying motivations in their roles as intermediaries of the land deals. However, for this purpose, repeated interviews with the same person proved more fruitful, but they were not generally possible in the districts beyond the case study sites due to time constraints.

I used a more structured or a looser interview guide, depending on the type of expert interview. The guides were tailored to each interviewed person and according to my growing knowledge. The expert interviews were always conducted in English; all interviewed individuals turned out to have excellent English language skills.

#### **Box 1: Empirical data and other sources of information**

##### Research stage I: National setting and land deal situation

(research question 4, contribution to research question 1, selection of case studies)

- 18 expert interviews with national government officials
- 17 expert interviews with representatives of civil society organisations, academia and others
- Legal documents
- Published and unpublished reports, investors’ webpages

##### Research stage II: Case studies in Kilolo and Pangani districts

(research questions 1-3, background to case studies)

- Investors’ webpages
- 10 interviews with representatives of investors
- 17 expert interviews with regional and district government officials
- 25 interviews with key persons at village level
- 33 interviews with people of affected villages
- 100 interviews with people of affected villages, conducted by field assistants
- 11 group discussions, including 2 participatory mapping sessions
- 1 site visit to former landholding with burial places

##### Research stage III: Insights into attitudes of officials in additional six districts

(contribution to research question 1)

- 11 expert interviews with district and regional officials of six districts

#### ***Semi-structured interviews with different groups of people***

In-depth semi-structured interviews (Newing 2011, pp. 101-104; Willis 2006, pp. 144-146) focusing on the research questions 1-3 were conducted with local people from different economic backgrounds, gender and age, ranging from individuals who were heavily involved



in the land deal to people who were not directly affected. Key informants such as representatives of local government, elders, and teachers were interviewed regarding the research questions, but also in more explorative interviews that aimed to give me an overview of the case study area and the characteristics of its population. Interviews were based on a semi-structured interview guide that allowed for flexible formulation and sequencing of the questions, and permitted additional questions that came up during the interview. The interviews lasted around one hour in average, and were directly translated by the research assistant from the local language into English and vice versa. The interviews were usually conducted in front of or inside the respondent's house, sometimes with a single person, but often in the presence of family members, who also took part in the interview.

When I visited a village for the first time, I had to approach the village chairperson and/or the Village Executive Officer (VEO, an employed secretary to the Village Council) and inform them about the research endeavour. In Case Study A, where individual land holdings had been transferred to the investor, the village chairpersons were asked whether they could provide a list of people who had handed over land to the investor. In most cases there was a list in the minutes of a Village Assembly meeting. In one of the villages I examined, I visited and interviewed the full sample of directly affected people. In other villages, I had to make a selection. Besides these directly affected individuals, I approached additional villagers for interviews. For those, and for the interviewees in Case Study B, where the land that had been transferred was village reserve land, I applied a purposeful sampling strategy with focus on maximum variation (Patton 1990, pp. 169, 172), making sure to include respondents of both sexes, with different economic situations and different ethnic origins. Sometimes I also applied the snowball system (Patton 1990, p. 176) to find additional respondents.

Approaching labourers of the forestry companies proved to be more challenging. In some areas, the workplace of the labourers is remote and they work for long hours six days a week. In Case Study A, many recruited labourers could not go home every day. They stayed on a campsite near their workplace and were brought back to their villages once a month by a company truck. The campsite, part of the company's fenced area, was not accessible to me. In other cases, where labourers could reach their home on a daily basis, interviewing them entailed visiting them at their homes late in the evening, when time was limited and the labourers were tired, or on Sundays, when they generally preferred to be spending time with their families or in their fields. Thus the data on labour conditions from the perspective of the local population are based on limited interviews with labourers, and with some former labourers who had stopped working for the forestry companies.

Several meetings were also held with the plantation operations manager and company field staff in Case Study B, while in Case Study A contact with the company was limited to a few initial meetings before they later turned me down (see below).

### *Group discussions*

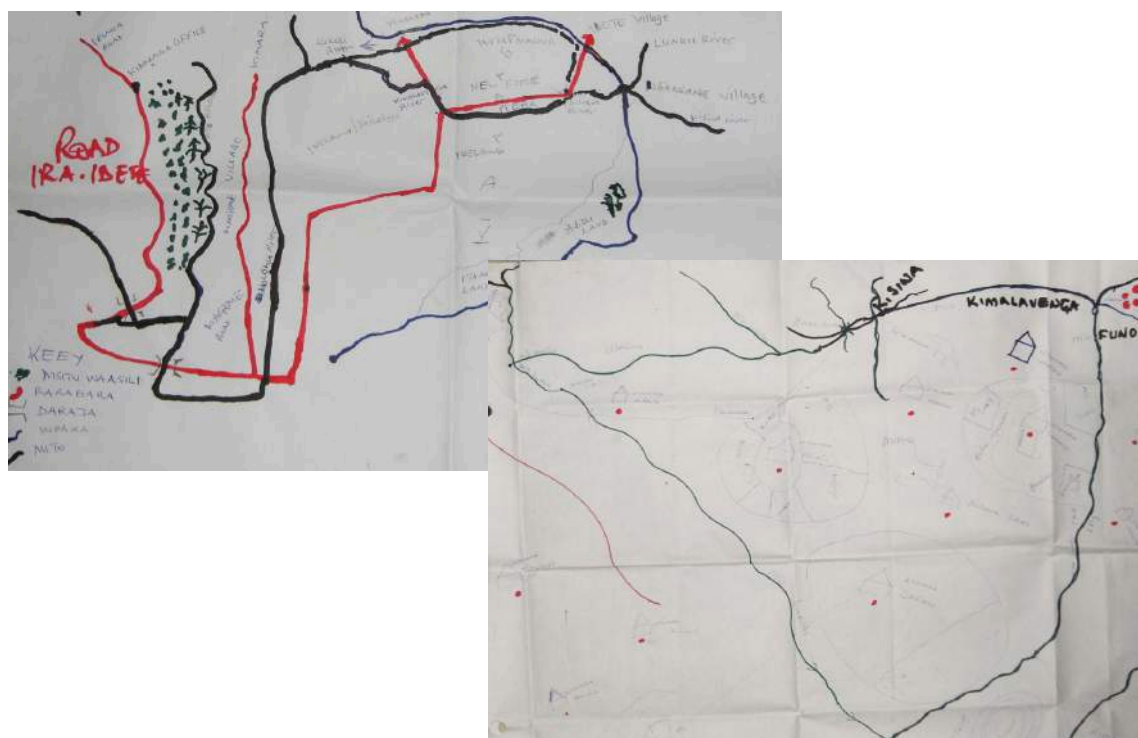
In total I conducted eleven group discussions (Flick 2007; Newing 2011, pp. 104–106) at both case study sites. In four cases, the groups formed more or less spontaneously when I had actually intended to interview one of the village leaders. Seven group meetings of six to ten participants each were held at my own initiative. They included two mapping sessions (see below). I felt that women would feel more comfortable among themselves, and so the discussions were in some cases conducted in separate women's and men's groups. The participants were invited on the basis of criteria that allowed for a broad mix of people who were affected to different degrees by the land deals and came from varying socio-economic background. The meetings were held in village offices. VEOs or village chairpersons helped organise them, but they were asked to leave the room during the discussions. The involvement of local leaders might have caused a bias in the selection of participants. However, we usually found a mixture of opinions among the group members.

The detailed procedure can be seen as a combination of group interviews and group discussions, with more structured parts, and other parts where the participants were encouraged to speak more freely (Boddy 2005; for group interviews see also Flick 2007, p. 249f). My field assistants (see Section 3.3.4) were well instructed about the procedure beforehand, and the questions I had prepared for discussion were gone through together with them. After I had opened the meeting with an introduction, it was mainly the field assistants who moderated the discussions. The meetings were all held in Swahili and taped, and they were in general not directly translated into English so as not to disturb the flow of the discussion. My command of Swahili was good enough to allow me to get the gist of the debates. In certain cases, I asked for a quick translation so that I could pose further questions, if I thought it necessary.

The group discussions focused on the people's views and opinions of the land deals, the investors, the national, district and the local governments' role. Hence, they mainly produced data regarding the third research question, but also touched on issues relating to the other research questions. The discussions also focused on local people's livelihoods and aspirations, providing me with information about local living conditions in the case study sites.

### *Participatory mapping*

I asked to conduct a participatory mapping session (Chambers 1994; Beazley and Ennew 2006, p. 194) in each of two neighbouring villages with contested land rights (see Research Paper II). The village leaders were instructed to invite particularly elder participants rooted in the region, as the existing land tenure systems had historical roots. The participants drew their areas on large sheets of paper and discussed and explained various issues to me (see Figure 5). These meetings proved to be extremely helpful for understanding the area's complex land tenure situation.



**Figure 5: Outputs of participatory mapping**, in Kilolo District in January 2011; photos by M. Locher.

### *Participatory observation and site visit*

While staying in the case study sites, I was able to observe local living conditions and social interactions to a certain extent; this gave me a better understanding of the social context.

During my interviews with local respondents, the conditions of people's housing and clothes helped me to make a broad judgement of their economic situation. I planned to attend village meetings regarding the land deals, but unfortunately no such meetings were held during my field stay. In Case Study B, a field assistant had the chance to observe a Village Council meeting and a Village Assembly meeting<sup>20</sup>, when district officials and representatives of the investor came to the village. The notes of her observations provided interesting data. In Case Study A, an older man agreed to show me the plot of land that his family had lost to the company. This land included the graves of his ancestors, which the company had partially planted with seedlings (see Figure 6). The visit and the related informal talks gave me a number of insights.



**Figure 6: Gravesite surrounded by tree seedlings** planted by the investor in Kilolo District; photo by M. Locher (2011).

### **3.3.2 Accessing interview partners**

The way in which I established contacts for interviews with experts and key persons was very important. The interviews generally proved far more fruitful when they were arranged through personal contacts than when I initiated them through bureaucratic procedures such as research permits. My membership of the NCCR North-South network was particularly helpful in this regard in two ways. First, I learned a lot about research practices and cultural differences from the experiences of other 'Northern' researchers in Tanzania, but also from supportive exchanges with Tanzanian colleagues. Second, the NCCR North-South network and additional contacts with researchers from outside the network helped me gain access to interview partners for the expert interviews.

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<sup>20</sup> For a description of the Village Council and the Village Assembly, see Section 4.1.1.

The network was also relevant for making contact with the investors. Establishing contact was relatively smooth for Case Study B, where one member of the board of the company was a personal friend of one of my academic contacts. Hence, several information-rich meetings were held with the plantation operations manager and company field staff. In contrast, in Case Study A, where I had no personal connections, the contact to the company was limited to two formal meetings at the regional office in Iringa. Thereafter, the company's headquarters in South Africa refused any further contact<sup>21</sup>.

With every interview I conducted, I increased my network and gained further contacts. Naturally, it wasn't always possible to get a personal reference for a new interview partner. I gained a standard reference letter from SUA that allowed me to approach regional and district officials for the regions I had selected for my field research. Repeated visits improved the quality of the interviews, as they built trust.

### 3.3.3 Researcher positionality

When conducting qualitative (in-depth) interviews, and particularly when the research topic is sensitive, the researcher's positionality is crucial. The success of field research depends to a great extent upon the role the researcher is assumed to be playing (Flick 2007; Müller-Böcker 1999). One important issue is establishing a certain level of trust. In that regard, it was helpful for the interviews in the villages and also with (English speaking) officials that I had gained a basic command of Swahili language and of Tanzanian ways of communication. Furthermore, with the exception of a few expert interviews and the group discussions, none of the interviews were taped. When interviewing villagers, I did not want to risk intimidating them with technical equipment and by adding an obstacle to trust. In expert interviews with government officials, I gained the impression that they would rather share their information and opinions on this politically sensitive topic if I did not tape our conversation.

#### *Positionality in expert interviews*

Due to the politically sensitive topic, I had to find ways to approach government officials in order to gain their acceptance and commitment to conduct a fruitful interview. I used to frame my research interest in a neutral way, stressing the aspiration to look at both (potentially) positive and negative consequences of land deals. I also applied various techniques to position myself vis-à-vis the interview partners, depending on their formal position and personality. I usually did this spontaneously during the interviews, but also considered it in terms of Bogner and Menz' typology of interaction between experts and interviewers. The following four types of interaction proved useful (Bogner and Menz 2002, pp. 50-63):

- The interviewer can act as a *co-expert* or as an *expert of a similar field*: when he or she is considered by the interviewee to be either an expert in the same area of expertise or an expert with different, but equivalent expertise. Such an interview is dialogue-oriented and can be seen as a symmetrical exchange of knowledge among 'equals'. Being a PhD student I usually gained respect as an academic and was increasingly treated as an expert, the more explicit knowledge I had acquired from other interviews and was able to share.
- When the interviewee perceives the interviewer as little knowledgeable, as a *lay person*, but with a great interest in the interviewee's subject, this establishes an asymmetric situation, in

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<sup>21</sup> Having read my PhD proposal, which quoted some very critical voices on the global land rush, the company's managing staff obviously did not trust me to collaborate with them and/or produce the results they wished. Unfortunately, I had visited the company's nursery before getting official go-ahead from headquarters, with the friendly permission of the local manager. Though not my intention, this was interpreted as trespassing on the company's territory. My assertion that as a researcher I intended to assess different perspectives on the land deal was apparently not a persuasive answer to their central question – analogously formulated in the meeting – whether I was 'on their side or not'. I kept company staff informed about my fieldwork, but could not convince them to meet again.



which the interviewee mainly shares and the interviewer receives information. The interviewer can ask very open, almost naïve questions that often provoke an urge in the interviewee to develop the subject and explain at length. I occasionally used this type of interaction with people from other backgrounds such as lawyers and business people, and with people who seemed to like to ‘preach’. Acting as a layperson sometimes seemed to help inspire confidence in the interviewee.

- When the interviewer and interviewee share common values and experiences (e.g. if they are members of the same political party), the interviewer can be seen as an *accomplice*. This interview form is characterised by trust and the sharing of confidential information, and the interview style is informal. I did not experience this constellation to any real extent, but I sometimes felt I was in this kind of interview when talking to representatives of civil society organisations campaigning for local people’s land rights. They seemed to ascribe to me motives similar to theirs.

These types of interaction are not neatly separable and were often combined during one interview.

### *Positionality vis-à-vis interviewees in the case study areas*

After some first scepticism or shyness, the interviewees I approached in the villages often seemed flattered that a researcher from Switzerland was interested in their everyday lives and their experiences with the companies. However, it was necessary to ensure that interviewees understood that though from Europe, I was not part of the European investment companies. The association with the Sokoine University of Agriculture (SUA) proved very helpful in this regard. SUA was well known to most of the villagers and highly respected, and my links to it gave the research a more ‘local touch’. Some respondents wanted to know what benefits they would get out of this research. It was important to explain transparently that this PhD study would usually not give them any practical benefits. However, in some cases I was able to provide some knowledge about their legal rights or share recent information I had received from the district land officers. This was greatly appreciated. Also, repeated visits to the same interviewees were very valuable for building confidence and receiving more in-depth information.

### **3.3.4 Working with research assistants**

I worked with four research assistants. They not only translated for me, but also facilitated access to interview partners and accompanied me when I approached the local authorities to gain permission for my research. They supported the research by explaining cultural differences in communication and interaction, which helped me to behave in a locally acceptable manner.

In one case study area, I got to know a local inhabitant who had worked for a European researcher before. He offered me his services. He stemmed from a middle-class family with a respected father and had done research in the whole area before, so he was very helpful in arranging contacts and building trust with interviewees. During the exploratory phase and in the other case study area, I worked with three young scholars.

Two of my research assistants conducted a number of interviews after I had left the area. Having worked with me for a while, they were familiar with the research questions and my way of working. I had gained the impression that some of the people were intimidated in the presence of a foreign researcher and guessed that they would open up more when the interview was conducted by a Tanzanian researcher on his or her own.

### 3.4 Processing and analysis of data

The empirical data consist of around 230 qualitative interviews in total, and 11 group discussions, including two mapping sessions with their drawing products (see Box 1 in Section 3.3.1).

Some expert interviews and all group discussions were **recorded** and then **transcribed**. Not all the other interviews were recorded; instead **notes** were taken during the interviews. These notes were usually typed up and added to the same evening to avoid missing out any important information. When I conducted interviews jointly with field assistants, they were usually asked to crosscheck and – if necessary – add to the typed notes. The records of the group discussions were directly translated and transcribed in English, by or together with the field assistant who had facilitated the group discussion.

I used several techniques of **qualitative content analysis** (Mayring 2010) to analyse the data. The process and immediate outcomes of land acquisitions were analysed by first structuring the data regarding their content in a rather deductive procedure and browsing through the plentiful data in search of specific information. In a second step, the relevant aspects were either summarised or compiled chronologically in a table. This procedure was helpful when trying to retrace the negotiation process for compensation in a specific village, for example. The analysis was sometimes of a purely descriptive character, when the statements regarding a certain issue were broadly consensual. However, it sometimes also proved to be more complicated, when the answers of the interviewees varied considerably. By bringing together the different statements, and trying to weigh the plausibility of different answers and interpret discrepancies, I attempted to reconstruct the issue under analysis from different angles. In such cases, I strove to gain more data from different groups of people on the same issue so as to get a clearer, or at least a broader, picture (Denzin 1970).

Data regarding the more interpretative research question related to local people's perceptions were analysed using the **open coding techniques** proposed in the Grounded Theory (Corbin and Strauss 2008, pp. 61–74), similar to Mayring's technique of building categories based on the data material. This inductive procedure allowed for an open approach to the data and more in-depth analysis. For example, local people's expectations vis-à-vis investors were developed in this way by analysing related statements in the context of the decision-making process or interviewees' comments regarding the investors' activities.

For answering the fourth research question regarding research practices I complemented my own data with data of my co-author and with a highly **detailed literature review** on the situation in Tanzania (see annotated bibliography with 61 entries in Locher and Sulle 2013). By compiling information related to land deals in chronological order of publication date or indicated fieldwork period, my co-author and I were able to establish whether specific pieces of information were based on primary data generated by the authors of a given report, or whether they were derived from secondary data. Thus, we could trace and analyse the practices of data representation and reproduction.

## 4 Land laws and land deals in Tanzania

Tanzania can be considered a typical target country in the recent land rush. With large areas of seemingly unused arable land according to government statements (Askew et al. 2013, p. 120; TIC n.d., pp. 9, 21, 28) and a recent World Bank report (Deininger and Byerlee 2011, p. 89) and with favourable investment policies, it has attracted a number of foreign investment projects over the last decade. At the same time, media reports and research findings suggest growing competition for land and an increasing number of land conflicts (Abdallah et al. 2014, p. 36; Askew et al. 2013, p. 120; The Citizen 2013). Further, the country struggles with an unstable food security situation (Mann and Smaller 2010, p. 6; UNCTAD 2009, p. 159), stirring up the debate about the legitimacy of land deals and their potential effects on local people.

In the following sections, I will briefly explain the legal and policy basis for transnational land deals and describe the overall land investment situation.

### 4.1 Land laws in Tanzania

#### 4.1.1 Land tenure regime and legislation

Tanzania's land tenure regime is based on local laws, religious laws and the laws of the German and British colonialists (Shivji 1998, p. 2f; see also Isaksson and Sigte 2009). The process of 'villagization' (village formation, called *operation vijiji*) brought major changes to the land tenure regime as part of the *ujamaa* strategy implemented by President Nyerere's socialist government in the late 1960s and the 1970s<sup>22</sup>. Villagization's resettlements – often implemented with considerable force – of about two-thirds of the rural Tanzanian population and its encouragement of communal farming based on collective land holding resulted in major but poorly planned land reform and confusion over land tenure (Shivji 1998, p. 12; Abdallah et al. 2014, p. 43). Following an economic crisis and to some extent due to pressure from donors, Tanzania abandoned the villagization strategy in the mid 1980s, and went through liberalisation processes. Land increasingly became a marketable good; land rights were transferred among citizens, and the number of land conflicts increased. The conflicts were also partly the result of the tenure insecurity created by villagization, particularly in numerous cases where people decided to move back to their original homelands. Overall, the land tenure regime in Tanzania is considered to be quite complex (Abdallah et al. 2014, p. 37; Daley 2005a, 2005b; Knight 2010, pp. 153–155; Odgaard 2006; Ojalammii 2006).

In response to changing land tenure practices and conflicts, the government introduced a new land law in 1999, which came into force in 2001. It consists mainly of the Land Act (URT 1999a) and the Village Land Act (URT 1999b), supplemented by Regulations (e.g. Village Land Regulations, URT 2001). The law enshrines all land as public land (URT 1999a, s. 4(a); URT 1999b, s. 3(b))<sup>23</sup>. The land is vested in the President, who holds the final decision-making rights on behalf of the whole nation. Citizens cannot hold radical titles, i.e. ownership of land,

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<sup>22</sup> *Ujamaa* is Swahili for 'familyhood' or 'community'. The main purposes of the villagization programme were the delivery of education, health and water services, the introduction of more productive modern agriculture, and the encouragement of socialist forms of cooperation (Scott 1998, p. 230). In Scott's words (*ibid.*, p. 231): "For Nyerere, village living, development services, communal agriculture, and mechanisation were a single indissoluble package".

<sup>23</sup> Radical title in all land has been vested in the state since German colonial times (Shivji 1998, p. 2; Stein and Askew 2009, p. 2).

but they can own *rights over* land, i.e. rights to occupy and use it (Alden Wily 2003, p. 19). Such rights to occupy may be bought or sold, and inherited.<sup>24</sup>

All land in Tanzania is divided into three classes with differing jurisdiction. 'General Land' is administered by the Ministry of Lands, Housing and Urban Development (in short, hereafter, Ministry of Lands) and comprises urban areas and land that has been allocated by the central government under entitlements. 'Reserved Land' refers to several specific types and uses of land, such as forests, national parks or highways, and is governed by the relevant Ministry (Alden Wily 2003; URT 1999a, s. 6).

'Village Land' includes the areas of the approximately 12,000 villages – roughly two-thirds of Tanzanian land – and is administered by the respective Village Council. The Village Council is the elected local level government of 15-25 members, accountable to the Village Assembly, which consists of all residents above 18 years (Alden Wily 2003, pp. 4-6). The Village Council manages the land on the basis of customary law, provided this does not violate the main provisions of the statutory law, such as the rights of women, children or the disabled (URT 1999b, s. 3)<sup>25</sup>. Customary law is defined as "law which has hitherto been applicable in that village" (URT 1999b, s. 20(4)(a)). Customary rights can be registered through a Certificate of Customary Right of Occupancy (URT 1999b, s. 29). However, customary rights also explicitly include unregistered rights, and have the same legal status as land titles to 'General Land'.

Village Land can be further sub-divided into three categories (URT 1999b, s. 12(1)), i.e. 'communal village land', used for public purposes such as schools or public markets; 'individual land', occupied or used by an individual, family or group of persons; and 'spare land' for future communal or individual use. The latter is sometimes referred to as village reserve land. Each village is supposed to develop its own Village Land Use Plan (URT 2007). A village land use plan shall include an analysis of the current use of the land and the future community needs (URT 2007, s.27(1)). The preparation of a village land use plan is a lengthy participatory process supported by government officials. In August 2010, only around 10% of all Tanzanian villages had such a plan (interview with official of the National Land Use Planning Commission in 2010; Abdallah et al. 2014, p. 42). Since around 2007, a village land use plan is reportedly required before land can be transferred to an investor<sup>26</sup>.

Tanzanian legislation can be termed an "institutionalised hybrid" (Benda-Beckmann et al. 2006, p. 19; see also Knight 2010, pp. x, 217), combining coexisting customary laws and state law. It has decentralised responsibilities for land management in rural areas to the lowest government level (Cotula and Mathieu 2008, p. 23). However, observers see the land acts as being controversial (Palmer 1999). Shivji (in Palmer 1999, p. 4) and Sundet (2005, p. 13f) criticise the fact that the national government retains too much power over village land. Vermeulen and Cotula (2010, p. 909) and Alden Wily<sup>27</sup> (2011) on the other hand see the land

<sup>24</sup> I therefore refer to 'landholders' instead of 'landowners' in my thesis. According to the recent Land Use Planning Act (URT 2007, s. 2), landholder means "a holder of a right of occupancy or customary right issued or recognized under any law relating to the acquisition of land rights in Tanzania under the Land Act, and the Village Land Act".

<sup>25</sup> This provision means that, for example, a customary land law that foresees no landholding for women, as in many Tanzanian communities, is not fully respected and protected by the state law. In that sense, the protection of customary land rights is limited. For insights into the introduction of women's land rights in the drafting of the land laws see McAuslan (2010).

<sup>26</sup> The requirement of a village land use plan for land transfers is not spelled out in law, but reportedly in a Presidential Order from 2007 (Isaksson and Sigte 2009, p. 31). Several national and district officials I interviewed referred to this requirement, but – like Isaksson and Sigte – I was not able to get hold of the Presidential Order. The 'Guidelines for Sustainable Liquid Biofuels Development in Tanzania' published by the Ministry of Energy and Minerals in 2010 state that land deals for biofuel investments require village land use plans, but these guidelines cannot be considered as legally binding and do not effect land investments for other purposes.

<sup>27</sup> Liz Alden Wily was a consultant for the UK Department for International Development (DFID) and the Tanzanian Ministry of Lands during the process of drafting the land acts (Palmer 1999, p. 2; Sundet 2005, p. 2). It is debatable whether this former professional position diminishes her capacity for (self-)criticism or improves her discernment



acts in a more positive light, particularly in comparison with laws of other African countries. Alden Wily, who analysed the laws of more than twenty African countries, considers the legal situation “indisputably most advanced in Tanzania” (2011, p. 747) in terms of assigning the representation and protection of customary land rights to democratic and legally acknowledged community-based governments<sup>28</sup>. German et al. (2013, p. 11) too emphasise Tanzania’s progressive laws compared to the situation in Ghana, Mozambique and Zambia, where legislation places more power in the hands of local chiefs than in the people they represent.

The implementation of the new laws is a slow process, hampered by a lack of funding, corruption and a constantly changing legal framework due to a variety of amendments and detailed regulations since the laws came into force (e.g. URT 2001, 2004; Abdallah et al. 2014, p. 43f; Askew et al. 2013, p. 136; Pedersen 2010, 2012, p. 277). Yet it seems that enhanced education and the efforts of civil society organisations are slowly improving recognition of customary rights (Askew et al. 2013, p. 137).

#### 4.1.2 Legal regulations regarding land transfer to a foreign investor

Non-Tanzanian citizens can only obtain land (in the form of rights of occupancy) for investment purposes (URT 1999a, s. 19(2)). Foreign investors, who are interested in land in rural areas, have in principle three options<sup>29</sup> (Abdallah et al. 2014, p. 40). They may receive derivative rights from the land bank of the Tanzania Investment Centre (TIC), which is still very limited to date (see next section); they can purchase or sublease land from other holders of granted rights of occupancy; and, finally, investors might receive titles of rights of occupancy from the Ministry of Lands. For that to happen, suitable plots of ‘Village Land’ need to be transferred to the category of ‘General Land’, following a complex procedure that is outlined below<sup>30</sup>. Rights of occupancy and derivative rights can be granted for a maximum of 99 years (URT 1999a, s. 32(1)).

A common way for investors to find appropriate land in rural areas – this also applied to the two case studies – is as follows (see also Abdallah et al. 2014, p. 42). Advised by the TIC, investors approach district or regional government officials or politicians in order to identify areas with potentially suitable land. Together, they visit respective villages and inform the Village Councils (VC) and Village Assemblies (VA) about their plans. If the VA in general agrees with the project, a complex *de iure* process of land transfer starts, entailing the

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in interpreting and comparing the laws, given the considerable insights she gained and her vast experience in several African countries.

<sup>28</sup> The controversy is related to the complexity and some inherent contradictions in the law, which leave room for different interpretations (Sundet 2005, p. 2). An important ambiguity is the definition of general land, which is not consistent in the two land acts and affects the definition of village land. In the Village Land Act, general land is described as “all public land which is not reserved land or village land” (URT 1999b, s. 2); whereas the definition in the Land Act features the same definition, but with the addition “...and includes unoccupied or unused village land” (URT 1999a, s. 2). This weakens the Village Councils’ authority in administering land deemed “excess” village land (Sundet 2005, p. 14). Another point of strong criticism is the President’s radical title in the nation’s land, which again questions the position of the Village Councils as managers of village land (e.g. Shivji in Palmer 1999, p. 4). However, Alden Wily seems unconcerned about the President’s radical title and argues that it is more important “where control over land tenure matters is actually vested”, namely in the Village Council (Palmer 1999, p. 4).

<sup>29</sup> A foreign investor cannot acquire customary rights of occupancy, as these rights are only provided to citizens (URT 1999b, s. 22(1)).

<sup>30</sup> A fourth, but so far not commonly practised, option for land access is provided by the Tanzania’s Land (Amendment) Act 2004. It allows the establishment of joint ventures between foreign investors and citizens, where local groups retain land rights, while the investor can obtain an “interest in land” from citizens (URT 2004, s. 3, referring to URT 1999a, s.19(2); see also Vermeulen and Cotula 2010, p. 907, Footnote 5 and ‘land for equity’ model in Section 7.4). For more details on how foreign investors can acquire land, see Isaksson and Sigte (2009), Sulle and Nelson (2009), LEAT (2011) and Makwarimba and Ngowi (2012).

following steps, among others (URT 1999b, s. 4). The district land officers demarcate the respective land plots. Thereafter, the Ministry of Lands gazettes a notice and sends it to the respective VC. The VC must inform all villagers that might be affected by the loss of their customary land rights through such a land transfer. The affected people can make representations to the VC or to district land officials, who shall take these into account in their further decision-making. Based on recommendations from the VC, the VA can either approve or reject the land transfer, and its decision is submitted to the district and further to the President<sup>31</sup>. During the VA meeting, a district land officer<sup>32</sup> and the investor are supposed to be present and answer questions. Thereafter, the payment of compensation has to be agreed between the investor<sup>33</sup> and the affected villagers (in case of individual land) or the VC (in case of communal or spare land). Based on a detailed survey of the land, a compensation scheme must be prepared and approved by the central government. Finally, the transfer of the land becomes effective through another government notice. Thereupon, the investor is supposed to pay compensation to the land right holders within six months. Compensation has to be paid for the value of the land itself<sup>34</sup> and for ‘unexhausted improvements’, namely constructions or crops or trees on the land. Additional compensation may include resettlement fees, transport and disturbance allowances. The valuation should be based on current market value and be prepared by a qualified valuer (URT 2001, s. 8-25).

The Tanzanian regulations are remarkable in two respects. “[T]he requirement that project proposals be discussed in front of the entire village assembly [...] makes Tanzania’s legislation far more progressive in ensuring downward accountability to affected persons than that of other countries” (German et al. 2013, p. 11). Thus Tanzania’s laws are considered “arguably among the most progressive legislation in Africa regarding community consent to land transfer” (Vermeulen and Cotula 2010, p. 909). Further, only in Tanzania “the ‘type, amount, method, and timing of the payment’ and ‘full and fair compensation’ are required by law.” (German et al. 2013, p. 11).

However, again, the interpretation and implementation of these legal requirements is questionable (e.g. Massay 2015). Abdallah et al. (2014, p. 44) highlight the lack of clarity about the legal setting: “Our visits to state agencies and district and village authorities have given the impression that no one has a full overview of the laws and regulations and how land is being allocated.” They further observed that state officials at various levels ignore laws and regulations (Abdallah et al. 2014, p. 51). Vermeulen and Cotula (2010, p. 909) examined the procedures regarding community consent to the land transfers and concluded that they are only

<sup>31</sup> In fact, according to the law (URT 1999b, s. 4(6)), in the case of areas over 250 hectares, the Village Assembly can only provide a recommendation, while the decision lies in the hands of the President. It is not even clear for areas below 250 hectares whether the President can alienate land against a Village Assembly’s will. The Village Land Act (URT 1999b, s. 4(1 and 2)) states that the President can transfer village land to general land or reserved land for ‘public interest’, whereas public interest includes ‘investments of national interest’, which are not further described in the law. However, in the context of foreign investment in agricultural land, it seems that the President does not in practice usually transfer land against a Village Assembly’s recommendation; at least I have no knowledge of any such case (see also German et al. 2013, p. 7; Isaksson and Sigte 2009, p. 25). Yet there is evidence of the government alienating the customary land rights of pastoralists through other (policy) means in the context of the expansion of protected areas and hunting tourism (see the recent case of the Loliondo Game Controlled Area, Nelson 2013; Smith 2014; TNRF 2011).

<sup>32</sup> In the law, it says „The Commissioner or an authorized officer...” (URT 1999b, s. 4(7)). The Commissioner for Lands is a government official appointed by the President, in accordance with the Land Act 1999 (URT 1999a, s. 9(1)), and responsible to the Minister for the administration of the Land Act (URT 1999a, s. 10(1)). In practice, authorized district land officers usually represent the Commissioner in their district.

<sup>33</sup> According to the law (URT 1999b, s. 4(8)), agreement has to be reached with the Commissioner for Lands. However, in practice, compensation is directly negotiated and paid by the investor. Direct payment by the investor is supported by the law (URT 1999b, s. 4(11)).

<sup>34</sup> This is contrary to Vermeulen and Cotula (2010, p. 911) who wrote that Tanzanian legislation would only foresee compensation for loss of improvements, not for land.

implemented to a limited extent. My own research results in this regard partly coincide with these findings, as displayed in more detail in Articles I and II and in Section 7.2.

## **4.2 Investment in agricultural land in Tanzania**

### **4.2.1 Agrarian development and investment policies**

Over the last decade, the Tanzanian government has shifted its focus regarding agrarian development from smallholder farming to large-scale farming (Abdallah et al. 2013, p. 51). Tanzania's 'Kilimo Kwanza' initiative (Kiswahili for 'Agriculture First') is a modernisation strategy launched in 2009 that seeks to transform and strengthen the Tanzanian agricultural sector by stimulating public and private investment with different incentives and improved infrastructure (Abdallah et al. 2013, p. 39; Polack et al. 2013, p. 23). The related Southern Agricultural Growth Corridor of Tanzania (SAGCOT) is additionally seeking to "foster inclusive, commercially successful agribusinesses that will benefit the region's small-scale farmers" through a public-private partnership approach (SAGCOT 2014; German et al. 2013, p. 8). The SAGCOT is criticised for promoting large-scale commercialisation and neglecting to strengthen smallholders (Sulle and Hall 2013).

Towards the end of the 1990s, the government started to introduce an institutional and legal framework for attracting foreign investment (Abdallah et al. 2013, p. 51; Vermeulen and Cotula 2010, p. 910). With the Tanzania Investment Act of 1997, it established the Tanzania Investment Centre (TIC). The objectives of this "one stop facilitation center for all investors" (TIC n.d., p. 79) are to "co-ordinate, encourage, promote and facilitate investment in Tanzania" (URT 1997, s. 5). In recent years, the government has actively invited foreign investors to come to Tanzania (interview with TIC officials in 2010 and 2011; Al Shaibany 2014). The TIC is mandated to establish a 'land bank' in order to ease land access for investors. But so far, very little land, mainly from abandoned former state farms, has been allocated to this database. The process to include 'idle' village land in the land bank seems to be stagnating due to slow administrative procedures, potential conflicts and a lack of funds for compensating villages (interview with TIC official in 2011; Abdallah et al. 2013, pp. 39f, 42; Massay 2015, p. 388).

The wave of foreign land deals, particularly for agrofuels, has provoked critical debate in the Tanzanian media and in academia and civil society organisations (e.g. Bengesi et al. 2009; Gordon-Maclean et al. 2009; Kamanga 2008; Mande 2009; Mngazija 2009; Mwamila et al. 2009; Ng'wanakilala 2010; The Citizen 2013). At the end of 2010, the government published new biofuel regulations, which set a ceiling of 20,000 hectares for agrofuel investments, and limited the duration of land tenure for biofuel projects to 25 years, with an initial conditional period of five years for the investor "to demonstrate investment seriousness" (URT 2010, s. 20).

### **4.2.2 Recent foreign large-scale land deals in Tanzania**

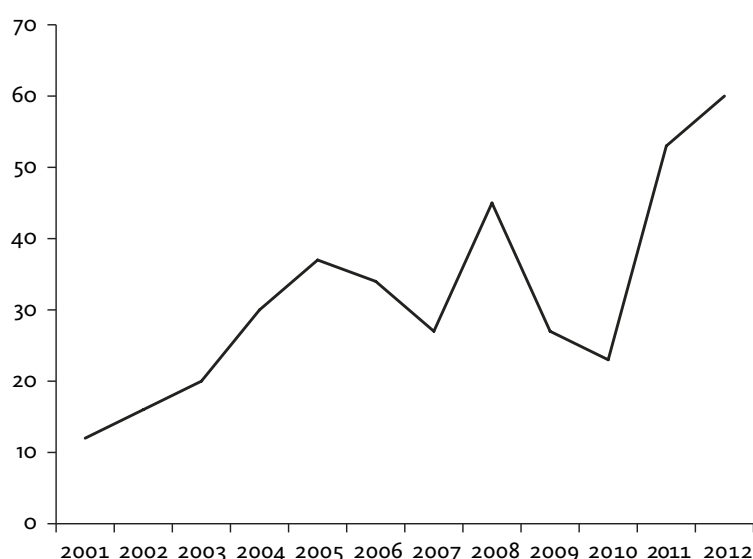
The evidence for foreign (and domestic) land deals in Tanzania is limited for several reasons (Hanlon 2011, p. 16; Locher and Sulle 2013). One explanation is "that procedures for foreign investors to access land for investment have become ad hoc and that Tanzanian institutions do not have a full overview of what is going on in the sector" (Abdallah et al. 2014, p. 51). The following observations can nonetheless be made.

There has been a steep increase in the number of companies intending to invest in agriculture in the last decade, as registered by the TIC (see Figure 7)<sup>35</sup>. Of these registered companies, according to Abdallah et al. (2014, p. 46), some have already acquired land, while others are

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<sup>35</sup> The two setbacks in the increase can be explained by political uncertainties during the change of president in 2005 and by the global economic crisis in 2008/2009 (Abdallah et al. 2014, p. 46).

still in the process of clarification. Many of the investments realised are located on former state-owned land (Abdallah et al. 2014, p. 53).



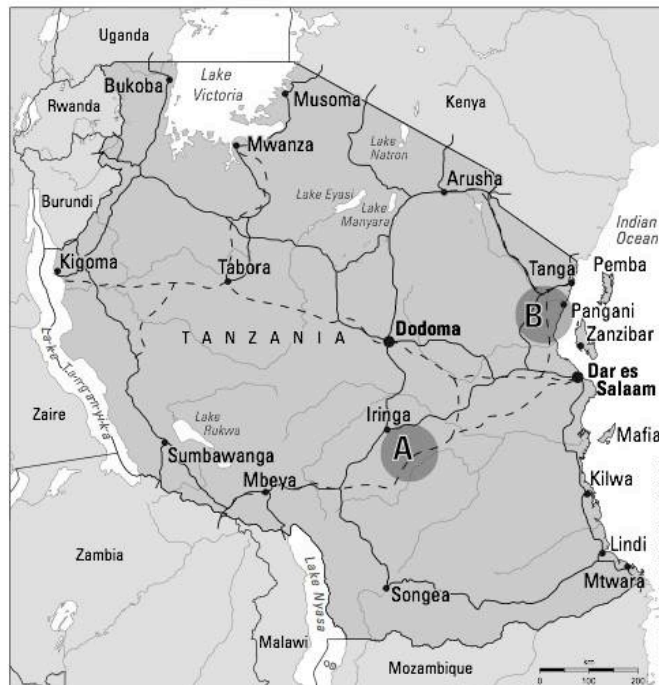
**Figure 7: Number of companies investing in agriculture in Tanzania**, foreign and domestic companies as newly registered at the TIC, 2001-2012; Source: representation by Abdallah et al. (2014, p. 45), based on data from the TIC Research and Information Division, 2013.

The increase in the number of registered companies in the years 2005-08 can be mainly attributed to (planned) agrofuel projects (Abdallah et al. 2014, p. 46). However, there is a striking gap between planned and implemented agrofuel deals (Hultman et al. 2012; Locher and Sulle 2013, p. 36). According to Abdallah et al. (2014, p. 45f), 32 projects, mainly by European investors, requested a total of around one million hectares of land, nine of them acquired land and only six went operational. Of those, three went bankrupt, and the others changed to food production. The reasons given are the global financial crisis, the disappointing economic performance of the most common agrofuel crop, jatropha, poor management and political uncertainties about the long-announced new biofuel regulation (Hultman et al. 2012; Nelson et al. 2012).

The increase in registrations for agricultural land deals at the TIC in most recent years is attributed to food investments (mainly rice and sugar cane plantations) related to the Kilimo Kwanza strategy (Abdallah et al. 2014, p. 46). However, little is known about these projects. Land investments also take place in the forestry sector. Though there are not many forestry companies, their plantations cover comparatively large areas (Locher and Sulle 2013; TIC n.d., pp. 32f). However, one of the established projects was cancelled in 2012 (see Section 5.2); other projects for expansion were withdrawn, indicating a potential slow-down in new forestry investments in Tanzania.

## 5 The case studies: sites and investment projects

The two case studies were selected based on their characteristics and criteria as described in Section 3.2. Their location is shown in Figure 8.



**Figure 8: Map of Tanzania showing the case study areas;** Source: own representation, design by M. Steinmann; Legend: A: Case study on the New Forests Company (NFC) in Kilolo District, B: Case study on the Tanga Forests Ltd (TF) in Pangani District.

### 5.1 Case study A: The New Forests Company in Kilolo District

Kilolo is a hilly district in Iringa region, located in the Southern Highlands of Tanzania. It has favourable conditions for the permanent cultivation of staple foods, vegetables and fruit. Many households plant timber as savings, particularly on their less fertile or steep plots of land. People also keep a few cattle in some areas. In search of income opportunities, some young men migrate temporarily to other regions in Tanzania to take up employment in forestry plantations. Most of the people in the area belong to the Wahehe and Wabena peoples and are Christians. Women were reported to be involved in village decision-making, though to a lesser extent than men.

In 2006, a Member of Parliament from Kilolo District introduced the New Forests Company (NFC) to his district. UK-based NFC presents itself as a sustainable forestry business. Its plantations in Uganda, Mozambique and Tanzania plan to produce feed material for sawmills, board factories and pole treatment plants, as well as energy operations (NFC 2015a). Initially, the company also aimed to produce carbon credits in compliance with the Clean Development Mechanism (CDM)<sup>36</sup> under the Kyoto Protocol (NFC 2009), but carbon sequestration goals do not seem to be part of NFC's focus anymore. However, the company has acquired Forest

<sup>36</sup> The CDM is a mechanism based on the Kyoto Protocol that promotes sustainable development and emission reductions. It certifies emission-reduction projects in developing countries. The emission reduction credits earned are saleable, and can be used by industrialised countries to meet a part of their emission reduction targets under the Kyoto Protocol.



Stewardship Council (FSC)<sup>37</sup> certificates for its Ugandan plantations and planned to have its Tanzanian plantation certified in 2014 (NFC 2014, p. 13), thus committing itself to respecting certain social and environmental standards. NFC emphasises that applying Corporate Social Responsibility (CSR) is a worthwhile strategy to reduce its risk of losing the investment to a fire (NFC 2014, p. 6). This is particularly the case in the research area, where it is a common practice to ‘clean’ fields after harvest by burning crop residues, and fires regularly get out of control. NFC therefore depends on the collaboration and benevolence of the local community for the prevention and, if need be, fighting of fires. It states: “CSR makes financial sense by reducing security costs and mitigating future risks, as prevention is always cheaper than treatment“ (NFC 2015b).

NFC representatives visited 12 villages in Kilolo District to promote their investment. In some villages the company's request for land was totally declined, with the argument of a lack of land. Other villages generally welcomed the investor. By early 2013, NFC had acquired 6,300 hectares of land in seven villages and was still in the process of acquiring more, in an attempt to gain more connected pieces of land. The transferred land belonged mainly to individual households (with one exception, where village land had been transferred; see Research Paper II). Some of the land was permanently cultivated, and a small part was used for grazing cattle; other land was not in use, mainly due to its remoteness from the settlements. Landholders were compensated with cash. In addition, the investor promised to support the local communities in terms of infrastructure improvements, distribution of seedlings, and training in enhanced tree nursing practices. In 2009, the company established a tree nursery and its first plantations of pine and eucalyptus (see Figures 9 and 10). By early 2013, it had provided a maternity ward and funded the improvement of a school building (communication with the district land officer in 2013; LARRRI 2010).



**Figure 9: Tree nursery in Kilolo District;** photo by M. Locher (2011).

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<sup>37</sup> FSC is an international not-for-profit organisation that promotes responsible forest management (FSC 2015).



**Figure 10: Plantation of pine tree seedlings in Kilolo District; photo by M. Locher (2010).**

## **5.2 Case study B: Tanga Forests Ltd in Pangani District**

Pangani District is located on the northern part of the Tanzanian coast. The local people practise small-scale subsistence farming and some cash crop farming (sunflower, fruits). They also fish and keep some livestock. Large areas of land are covered with bush, and are partly used by pastoralists for grazing and by villagers for collecting firewood and grass that is used for weaving mats and other products. An old sisal plantation run by a Kenyan company<sup>38</sup> provides labour opportunities. The work is considered very tough and is mostly carried out by migrants from Kigoma region, who live in a separate colony provided by the company. The ethnic composition of the study area is broadly mixed; the predominant religion is Islam. With some exceptions, women seemed to be little involved in village decision-making.

In 2006, Tanga Forests Ltd (TF) became active in Pangani. It is the subsidiary of the Norwegian company Green Resources SA (GRAS), which has been running large tree plantations in Iringa region since the 1990s. According to the company's statement, a major part of GRAS plantations are FSC certified (GRAS 2015a, 2015b). GRAS produces and sells carbon credits on the voluntary market; they are certified against different standards (Voluntary Carbon Standard and The Climate Community & Biodiversity Alliance) including a CDM project (CCBA 2015; GRAS 2015b, 2015c; UNFCCC 2015). In 2005, GRAS established TF with the aim of expanding its plantations to Pangani and other districts in Tanga region.

TF acquired an area of around 7,500 hectares in six villages in Pangani. With one exception, the land had been village reserve land covered with bushes and shrubs. TF did not pay any compensation in cash, but instead built various infrastructural buildings in each village,

<sup>38</sup> Amboni Plantations Ltd, a subsidiary of REA Vipingo Plantations Limited. REA Vipingo Group has its headquarters in Nairobi (Rea Vipingo Group 2014).



according to their priorities. This compensation in kind included a dispensary, a village office, a water tank, and school rooms. The company established a nursery and three plantations of teak and eucalyptus (see Figures 11 and 12).

In July 2012, GRAS closed down its subsidiary, TF. The reasons it gave were the weak performance of the planted seedlings due to unsuitable soil and changing weather conditions, but also conflicts over land issues (personal communication with former Plantation Operations Manager in 2013).



**Figure 11: Teak plantation in Pangani District; photo by M. Locher (2011).**



**Figure 12: New village office provided by the investor in Pangani District; photo by M. Locher (2011).**



## 6 Synthesis of the research papers: aims and results

The four research papers in Part II constitute the core of this PhD thesis. Paper II has been submitted to the Journal of Eastern African Studies, where it is going through an anonymised review by at least two referees. The other three papers have already been published in **double-blind peer-reviewed** journals. My **contribution to the four papers** is as follows:

- Paper I is co-authored by Ulrike Müller-Böker. I contributed the initial ideas, empirical data, data analysis and a major part of the conceptual work. I drafted the first manuscript, based on discussions about the main arguments, concepts and conclusions with my co-author. The article was then structured and written in collaboration with Ulrike Müller-Böker. I finalised it based on the referees' comments in consultation with her.
- Paper II is single-authored.
- Paper III is co-authored by Bernd Steimann and Bishnu Raj Upreti. Using the main idea by my co-authors and an initial draft by the second author, I elaborated the structure and arguments of the article. I contributed a third of the empirical material and reworked the discussion and conclusion in the manuscript. After receiving the referees' comments, I completed the article based on consultation with my co-authors.
- Paper IV is co-authored by Emmanuel Sulle. I provided the initial idea and the conceptual design for the article, conducted a major part of the review of compiled data from literature and contributed a smaller amount of empirical data. I wrote the manuscript in collaboration with my co-author. I established the conclusion in consultation with Emmanuel Sulle, and finalised the article after the revision.

### 6.1 Research Paper I

Locher M., Müller-Böker U. 2014: **“Investors are good, if they follow the rules” – Power relations and local perceptions in the case of two European forestry companies in Tanzania.** In: *Geographica Helvetica*, 69(4), 249-258.

This article analyses two important aspects of the case studies in Tanzania in detail. First, it presents local people's perceptions of the land deals, thereby answering research question 3. In doing so, it also briefly describes the land deals' implications (research question 2). Second, the paper examines the power relations between local people and investors during the decision-making and negotiation process, taking account of intra-community differences. Hence, it addresses research question 1.

The analysis shows that most local inhabitants welcomed the investors, based on – at least partially justified – expectations of gaining employment and infrastructure or other benefits as compensation for their land. Both types of compensation – in cash for individual land (in Case Study A) and in kind for communal land (in Case Study B) – were appreciated in principle. Individuals who received cash used it for varying short-term and more sustainable purposes (i.e. for immediate consumption versus improved housing or school fees). Many people also welcomed the infrastructure on offer, namely a dispensary, a village office, a water tank and a school-building improvement, among others. Local inhabitants expressed their view that the Tanzanian state did not have enough funds to provide such facilities. Interviewees further emphasised that there were no, or not enough, employment opportunities in their region. They therefore considered private investments to be necessary for the development of their region.

The paper stresses that there are three crucial conditions that determine the rather positive view of many local people. First, villagers strongly expect the investors to follow the proper procedure, respect local land rights and provide the agreed compensation in time. Second, local people expect to be able to continue their land-based livelihood strategies; thus, whenever

possible, they only provided land that was of no current use to them to the investors. Third, local people wish to have additional labour opportunities to diversify their livelihood strategies. However, the conditions of the offered labour opportunities were considered very hard in Case Study A, and the salary low and often paid late in Case Study B. Disappointment about the labour conditions on offer, as well as tensions and conflicts related to omitted land rights or delayed compensation payments (see also Article II) led to a more nuanced perception among affected people. Some even turned against the companies.

Focusing on the first research question regarding land deal processes, the paper scrutinised the power relations between local inhabitants and investors. Using access theory and a bargaining model, the analysis revealed the following power strands that shape decision-making on land deals.

- *Tanzanian land law*: It gives considerable decision-making power to the local population.
- *Access to government authorities*: Civil servants and politicians are highly respected among villagers and thus have a considerable impact in two ways: they firstly influence the decision-making process when accompanying investors in the villages, and secondly the implementation of the transfer process, including the clarification of complex land tenure situations and compensation settlements. They fulfil their intermediary roles in a variety of ways, ranging from supporting the local population up to seeking personal benefits through formal collaboration with the investor and playing a double role vis-à-vis the villagers.
- *Legitimizing development discourses*: The Tanzanian government's discourse of rural development, reproduced by government authorities at all levels and employed by investors, provides legitimation for land deals.
- *Unequal access to knowledge about land rights*: While investors have access to legal experts and can get support from the Tanzania Investment Centre in land rights issues, local communities have usually only very limited knowledge of land law.
- *Local communities' potential resistance*: In conflictive cases, local people could potentially (threaten to) employ illegal actions such as destroying the plantations as a final resort.
- *Unequal resources and alternatives*: the investors' favourable resources, i.e. their financial assets, and unequal availability of alternatives to the deal play a crucial role in bargaining situations. As long as investors have relatively unrestricted access to land in many countries, the resources villagers contribute to deals – land and labour – are comparatively easy for investors to replace; and as long as rural people receive only limited support in terms of infrastructure and income opportunities from other sources, they have hardly any alternatives to the proposed deals. Hence, many of them see foreign investment projects as a unique chance to improve their livelihoods.

These power strands lead to villagers having rather weak bargaining power vis-à-vis investors. Their power varies between groups within local communities. Some relevant factors are people's economic situation, their education, access to knowledge, gender and livelihood strategy, and other aspects of social identity. For example in case study A, households in adverse economic conditions, be it due to a drought or for personal reasons, tended to accept the deal, even when the compensation on offer was low. In case study B, women and pastoralists participated less in Village Assemblies that decided on the land deal and the infrastructure being offered. Generally, comparatively privileged households or individuals have a lower risk of agreeing to a land deal under unfavourable conditions and consequently suffering from adverse consequences. On the other hand, poor members of communities seem to make use of new labour opportunities more often than wealthier people.

Overall, unequal power relations during the land deal processes led to ambivalent outcomes and mixed local perceptions of the analysed land investments. This is despite the presumably more positive pre-conditions compared to other land deals – namely the relatively progressive land laws in Tanzania, and the assumption that forestry investors care more about good

relations with local people than investors from other sectors. The paper concludes that the global land rush in its current form provides severe risks for the livelihoods of rural populations.

## 6.2 Research Paper II

Locher M. submitted: **“How come others are selling our land?” – Customary land rights and the complex land acquisition process of a UK-based forestry company in Tanzania**, submitted to: *Journal of Eastern African Studies*.

Research Paper II provides in-depth findings related to research questions 1 and 2. It describes the decision-making and transfer procedure of a specific land deal in the context of a complex land tenure situation, and the related immediate implications including violations of land rights. It analyses flaws in the law and particularly in its implementation and reveals how unequal social relations lead to unequal recognition of customary and statutory land laws and rights. Employing the property concept and the legal pluralism perspective, the article elaborates the long and complicate process when the village Kidabaga transferred an area called Witamasiva – remote village spare land with no clear boundaries – to the New Forests Company (NFC). When NFC started to plant, it turned out that people from neighbouring village Kiwalamo had been using part of the plot, based on longstanding local agreements. After around two years, their claims were finally approved. However, the land had already been transferred, so they were not given back their land as they had requested, but were compensated for it.

In the area around Witamasiva, customary and statutory laws seem to have coexisted since the 1970s, without creating major tensions. However, their discrepancy became obvious with the investor's request to acquire that land. On the one hand, affected former landholders from Kiwalamo feel that it is their land that was sold by others. They refer to customary law and long-standing customary rights over that land, claiming that land tenure is regulated by agreements among local inhabitants, with village boundaries having no particular effect on the matter. On the other hand, part of the villagers and village representatives in Kidabaga feel that they rightfully decided to transfer Witamasiva – and accidentally also some area around it – and claim that it was their village's land. They refer to statutory law, which foresees the Village Assembly as the institution responsible for taking decisions regarding land within village boundaries. It is clear that the decision for land transfer was not made according to the customary law of Kiwalamo villagers, but rather according to statutory law. According to Meinzen-Dick and Pradhan (2001, p. 11), it can be concluded that the legitimising institution behind the statutory law was stronger than the collectivity behind the customary law. The analysis of the institutions and social relations reveals that statutory law enjoys broad recognition from all groups of stakeholders. It is embodied by district officials, who are highly respected by local people (as also highlighted in Research Paper I). Thus statutory law has stronger backing than customary law, which is only fully recognised and maintained by groups of villagers. The village government has a challenging double role, representing both statutory and customary laws. Village Council members may not always be capable of fully backing customary rights, as it can be very difficult to know about and identify all local arrangements.

The land deal process implemented as per statutory law featured at least six flaws at local and district level. The flaws included representatives of the village not showing the respective area to the district officers properly and not informing potentially affected villagers from the neighbouring village, and district officials not taking hints about affected landholders seriously and pressuring affected stakeholders to agree on compensation when the problems were recognised instead of starting the whole process from the beginning again. The flaws are related to (i) the difficulty of identifying local land orders in complex land tenure regimes, (ii) unequal social relations between government authorities, members of the Village Council,

other villagers and non-village members and (iii) unequal knowledge about statutory law of local people compared to representatives of the district and the investor (see also Research Paper I).

The paper illustrates that when flaws happen in the land transfer process, be they at local or district level, it is hard for affected local people to defend their rights. This resulted in adverse implications such as loss of land against own will, major delays in compensation payments, and a resulting decrease in food security for some households. It further led to insecurity among the villagers in Kiwalamo, as the deal cancelled part of their long-standing customary land arrangements, which in turn questioned other parts of their arrangements. In the worst cases, ‘indirectly compulsory resettlements’ were feared, i.e. although no housing was affected, some villagers indicated that they did not have enough arable land anymore to sustain their livelihoods, and as there was no reserve land left in their village, they felt compelled to move elsewhere. One of the weaknesses of the Tanzanian law is that it does not foresee such situations, so the affected people were not compensated for resettlement, as is the case when housing is directly affected by land deals.

The paper concludes that there is no guarantee that local land rights can be fully protected in the global land rush. The analysis showed that relying on legal procedure and on elected village representatives does not guarantee conflict-free land transactions. This is because of flaws in the law, but also, and more importantly, because several errors can occur during their implementation at different levels. Some of the weaknesses in implementation are related to unequal social relations between actors backing different laws. Thus, the claim that transnational land deals can be disciplined by improved regulations is questionable (see also Research Paper III). The findings of this paper support calls for alternative pathways of agrarian development that do not affect people’s land rights.

### 6.3 Research Paper III

Locher M., Steimann, B., Bishnu, R. U. 2012: **Land grabbing, investment principles and plural legal orders of land use**. In: *Journal of Legal Pluralism*, 65, 31-63.

Research Paper III builds on the findings regarding research question 1 as displayed in Research Papers I and II. The article focuses on two international proposals that came up in the broader context of growing concerns about potential negative impacts of the global land rush. These are:

- the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, endorsed by the Committee on Food Security (CFS) to protect people's rights (FAO 2012; in short FAO guidelines); and
- the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources*, developed by experts from the FAO, the World Bank Group, the International Fund for Agricultural Development (IFAD), and the United Nations Conference on Trade and Development (UNCTAD), to make such investments more responsible (FAO et al. 2010; in short RAI principles)<sup>39</sup>.

One of the proposals’ central tenets is that investors and host governments respect local people’s existing property rights over land by formalising them in a transparent and participatory manner. The article challenges the two proposals from a legal pluralism

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<sup>39</sup> The RAI principles have been strongly criticised for having been created by experts from international organisations instead of by a broader range of stakeholders. The document has since been further developed in a participatory process to the ‘Principles for Responsible Investment in Agriculture and Food Systems’, which were endorsed by the Committee on Food Security (CFS) in October 2014. However, Article III, written in 2011 and published in 2012, focuses on the 2010 version of the RAI principles.

perspective. Referring to empirical evidence from Tanzania, Nepal and Kyrgyzstan, it raises three fundamental concerns about the formalisation of property rights.

First, the paper demonstrates that the recognition of customary rights is a very complex and delicate endeavour. Local claims may overlap and compete with each other. Further, local elites, including elected representatives in Tanzania, might not be aware of all the flexible tenure arrangements in their constituency. One example concerns the case where people lost land to an investor against their will. This happened, among other reasons, because the village chairman, who was responsible for instructing government officials about a particular plot of land, was not fully familiar with the specific area and its local tenure arrangements (see Research Paper II). Further, individual property boundaries are often not visibly marked, but are conveyed verbally by referring to natural landmarks and reproduced through regular use such as planting crops. However, some land is not used intensively and there are also fallow periods. This makes it particularly difficult for outsiders to physically detect customary property rights during short visits. As a result, external interventions may fail to sufficiently account for existing property claims and rights, even when they have tried to do so in a participatory manner. Neither of the two international proposals addresses this in a fully satisfactory manner.

Second, the paper argues that formalisation through state intervention is sometimes necessary, but the centralist approach of formalising property rights, as proposed in the RAI principles, cannot be recommended in such circumstances. In many contexts, as illustrated in examples from Nepal and Kyrgyzstan, this approach has resulted in adverse effects for local communities due to the expansion of power of the central state administration rather than by strengthening local communities' rights.

Third, a more rights-based vision of a property regime that respects local land rights as proposed by the FAO guidelines still runs the risk of reinforcing unequal local power structures. For example in Tanzania, customary land rights can be formalised at local level. Yet this requires registration at village and district level and includes certain costs for landholders. Thus formalisation might be less accessible for poor people than for better-off villagers, and easier for members of the village government who have more regular contacts with district officials and often better knowledge on land laws than others. Yet, a rights-based approach to property rights leaves it to local communities to decide whether or not their land should become a marketable good to outsiders. The example of Tanzania's Village Land Act of 2001 with its decentralised land management, which gives full legal status to customary rights, is an attempt in that direction. Yet implementation brings its own challenges.

In many countries, the full realisation of a rights-based property regime would require new regulations, land reforms and fundamental changes in governance. Hence, from an analytical perspective, a moratorium on large-scale land deals would be the most appropriate step in order to implement such longer-term strategies to protect customary rights. From a more pragmatic perspective, though, the research paper acknowledges the FAO guidelines and – to a far lesser extent – the RAI principles as initial, more immediate efforts to reduce the negative effects of the land rush.

Conceptually, this article concludes that employing a legal pluralism perspective is very helpful for gaining a holistic understanding of land tenure systems. This is crucial for the analysis of potential effects and proposed measures in the context of the global land rush.

## 6.4 Research Paper IV

Locher M., Sulle E. 2014: **Challenges and methodological flaws in reporting the global land rush: observations from Tanzania**. In: *Journal of Peasant Studies*, 41(4), 569-592.

This paper provides answers to research question 4. It contributes to the evolving debate on appropriate research methodologies for studying the global land rush. The paper shows that flawed methods of citing and using data allow the dissemination of inaccurate information. This complicates the task of providing an overview of the situation of land deals, which is already challenging enough owing to the dynamic and non-transparent nature of the investments.

The paper first illustrates the challenges facing researchers in accessing relevant information in Tanzania. These are linked to the lack of a central government database and to the complexity of the land deal process. The analysis then presents the following methodological issues. Sources in several publications on land deals are given in aggregate, incomplete and inaccurate ways. As a consequence, readers are unable to trace the original sources of information. This results in neglected quality checks, “recycling of facts long after their sell-by date” (Scoones et al. 2013, p. 475) leading to the reporting of ceased or never realised land deals, and double reporting of deals under different names. Another major problem is related to the strong reliance on media sources in research on the global land rush. In addition to the identified selection biases in media reports summarised elsewhere, it is assumed that journalists focus on investments that provide exciting headlines, such as land deals that result in conflicts and protests. This bias, which could be called ‘bias towards land deals with spectacular outcomes’, might lead to the under-reporting of deals that draw less public attention, namely deals that create fewer conflicts or perhaps even positive outcomes for local people. The paper further illustrates that in Tanzania’s case, over-reporting also happens when media articles present investment projects as active, though they are merely announced plans that might never be implemented. In addition, it was found that announcements made by investment companies, though often considered ‘reliable sources’, are similarly unreliable. Not only do some investors seek to conceal information on land deals from the public, but companies also announce land investment projects as operational (possibly in an attempt to attract investors) when these projects have in fact either already ceased or the land deals have not yet started. The consequences of the flawed practices we present are an unnecessarily blurred picture of the land deal situation, producing an inadequate basis for relevant political decisions or social actions and a misleading starting point for new research projects.

The paper proposes a more specific, precise and rigorous way of collecting, presenting and reproducing data, which allows for the tracking of the primary sources of all the detailed information given in compilations of land deals. Though laborious and less user-friendly, this is the only way that compilations can serve as appropriate databases to support further research and political and social responses.

The paper refers to the data compilation and analysis for Tanzania published in Locher and Sulle (2013), which is mainly based on primary sources, and distinguishes between announced, ongoing, concluded and discontinued land deal processes. These figures are lower than contemporaneous figures in similar databases. The observations show, among other things, that there is a significant difference between the land deal projects that have been announced and implemented, that the boom in biofuel projects has subsided, and that the relevance of domestic land investments is largely unknown.

## **7 Final reflections, conclusion and recommendations**

### **7.1 Reflections on the conceptual and methodological approaches**

This research provides empirical findings for a debate that is often determined by theoretical perspectives and assumptions. My choice of the conceptual approaches was not based on an overall theoretical perspective. Yet it was coherent in the sense that the approaches – namely the critical livelihoods perspective, the property concept and legal pluralism perspective, access theory and the bargaining power model – complement each other, thereby furthering our understanding of land-related issues. The unique combination of approaches enabled me to (i) focus on local inhabitants' agency and on differentiation among them; (ii) comprehend property and access to land in its full complexity; and (iii) analyse power relations from different angles. The case studies are located in Tanzania, but the research approach can be applied to other contexts.

While the critical livelihoods perspective was applied from the beginning, the other conceptual approaches were chosen after a first analysis of the data. In what is a relatively new research field, this inductive procedure allowed me to be open to the empirical findings during the generation and first analysis of the data – in line with the overall qualitative research approach and the livelihood perspective's claim to start from the 'reality on the ground'. However, this procedure does present the disadvantage of offering only a limited theory-led focus during first data generation. For example, the concept of brokerage (Bierschenk et al. 2002), though only applicable to a limited extent, could be used in further studies. If employed at an early stage of the study, and with some adaptations, it could be useful during field research when one is examining specific aspects of the role government authorities play as intermediaries between investors and local populations. Yet, if not applied from the beginning, one might lack some specific data when conducting data analysis later on.

Based on the existing information in 2009, broad, empirical research questions, such as the ones treated in this PhD thesis, were adequate overall. With a growing body of evidence about the global land rush, more specific – and partly also more theoretical – research questions would be suitable for further research. The focus in this study was on the more immediate effects of land deals on local livelihoods. Further research will be needed to determine the long-term outcomes.

Lastly, I would like to add four minor observations regarding data generation. First, for expert interviews, my approach of being well prepared yet flexible in terms of my positioning vis-à-vis the interview partner proved fruitful, as did my spontaneous adjustments during the interview. Second, I found repeated interviews effective for generating data in villages, as it allowed me to gain people's trust and have better access to their personal perspectives. Third, direct access to labourers can turn out to be a particular challenge, depending on the local setting and the relation with the company. Labourers' time constraints and access problems in remote areas can hamper data generation and need to be taken into account when planning future research on this issue. Finally, it would have been useful to conduct more participatory observation in the villages; this would have given me a more profound understanding of local social structures including intra-household gender relations, and I could have participated in village meetings. However, I believe that I covered most of the relevant issues by triangulating methods and considering the literature.

### **7.2 Summary of the findings regarding the research questions**

The overarching aim of this thesis was to contribute to a differentiated analysis of the recent land rush in rural areas in the Global South. This was done through a detailed analysis of the



land deal processes, the immediate outcomes and local people's perceptions in two selected case studies, and by assessing reports and data compilations on the land deal situation in Tanzania.

Considering the lack of empirical evidence on more positive experiences, I deliberately chose an investment sector that I presumed would lead to more positive outcomes for the local population and a country with comparatively favourable land laws and good potential availability of land. The existing research on transnational land deals focused primarily on investments for food and fuel, and overlooked the significant role played by the forestry sector. I therefore added to a more complete picture of the global land rush by focusing on the forestry sector and by analysing cases with potentially positive outcomes. The choice of cases with favourable pre-conditions (critical case sampling) also allowed me to draw assumptions about land deals under less favourable conditions. Further, my critical analysis of research methodologies and existing data, as well as proposed guidelines for responsible land governance and investment, also contributed to a differentiated view of the phenomenon and its outcomes. In the following section, I shall highlight my main findings, along with the overall research questions presented in Section 1.2.

### *1. How do land acquisition processes take place?*

At the outset of this thesis, there was hardly any scientific knowledge about the processes of how land deals materialise. Focusing on power relations, land rights and differentiation among local people, this research highlights how numerous factors interact in this process. Some important findings were:

- Contrary to reports in most literature on the global land rush, local people in Tanzania generally *do* have a say. This is illustrated in the case of several villages where the Village Assemblies declined to provide land to the investors due to limited land reserves. They could take these decisions based on Tanzanian land law, and were backed up by district land officers. Thus local people's agency must not be underestimated, though this agency is subject to power relations;
- My analysis of power relations between investors and local inhabitants reveals a combination of relevant factors that influence land deal processes. The relevant power strands include land law, unequal knowledge about land rights, (access to) influential government authorities, legitimizing development discourses, local communities' potential resistance through (the threat of) destructive actions, and unequal resources and alternatives to the deal. The financial resources mobilised by the investors play a pivotal role in bargaining situations, and so does local people's lack of alternative livelihood options. I argue that the power strands and factors of bargaining power I identified play – with differing weights – an important role in land deals everywhere;
- Local, district and regional government officials and politicians play an important intermediary role in the villagers' decision-making and the process of land acquisition in terms of identifying and recognising local land rights and the settlement of compensation. The way government authorities fulfil their roles – whether they support the local population or whether they pursue national visions for agrarian development and their own personal benefit by working informally or formally for the investor – can substantially influence the outcomes of the deals;
- One needs to differentiate between social groups to analyse power positions and the related outcomes of the land deals. Some influential factors are the economic status of the household, which provides more or less room for manoeuvre, and people's level of formal education, which determines how well they grasp the land deal processes and their own rights. Gender and livelihood strategy (i.e. farming and pastoralism) are also factors in some contexts, as they influence the level of participation in village decision-making and information sharing. Another important issue in Tanzania is the villagization policy in the mid-1970s. The resettlements at that time and related local arrangements among affected



landholders contribute considerably to the complexity of land tenure within and across village borders, increasing the risk of land rights being neglected. Overall, many villagers made their decisions from a weak position, and some were even passed over in the decision-making process;

- The complexity of recognizing local land tenure must not be underestimated. Even when companies do try to follow the formal regulations, it is a complicated endeavour and one prone to errors. Thus it is hardly possible to guarantee full protection of existing land rights.

## ***2. What are the implications of land deals and related investments for local livelihoods?***

My findings focused on the immediate outcomes rather than the long-term ones and complement the existing literature in the following ways:

- There *are* plots of land that are unused or only extensively used and that local landholders agree to hand over to investors without losing their (immediate) livelihood assets. Thus dispossession and ‘surplus populations’ are not always the (direct) result of land deals. However, land availability varies at local level and may differ from village to village. Plots that are willingly handed over are fragmented and often not convenient or sufficient for the investors’ plans;
- Land investments can have positive implications. Unlike in other case studies carried out elsewhere, there was compensation in the form of public infrastructure and cash. Local people generally appreciated this. The compensation was particularly welcome in cases where people provided land that was of no direct use to them. The investors also offered labour options, as largely desired by local people. Yet in many people’s views, the conditions were disappointing;
- At both case study sites, unequal power relations during the negotiations and a lack of attention to complex land tenure situations led to cases where land rights were violated, inadequate compensation provided and, in the worst cases, food security actually decreased;
- A nuanced analysis shows that poor households with limited access to land are not only those with the least bargaining power, but also those who suffer most when they lose land under adverse conditions and are left without a basis for their livelihoods. On the other hand, some villagers from poor households also benefit from the land investments, at least to a limited extent, when they are able to take up labour opportunities that are sometimes rejected by members of better-off households. Although the labour conditions are arguably insufficient to raise people out of poverty, the new income opportunities do seem to make a positive difference to their livelihoods. However, most of the new jobs are not permanent positions, and far from all people who lost land were able to take up labour opportunities;
- In general, when discussing new labour opportunities as outcomes of land deals, it is of great relevance whether these jobs are a replacement or supplement to existing livelihood strategies; in both case study areas, a majority of households were able to continue their land-based livelihood strategies. However, this was mostly not the case in conflictive situations where people lost land against their will, and when poor households gave away their land in times of hardship.
- Taking a more long-term view, it is important to notice that the villages involved give up part of their reserve land for future generations when they agree to transfer unused land to an investor. They hand over permanent control of this land to the national government and the investors. This is not only the case in Tanzania, but also in other African countries with similar legal frameworks. It is to be expected that the descendants of families with limited access to land will be the first to suffer from future shortages of land.

Overall, I have shown that land investments by forestry companies have both positive and negative implications for local people and their livelihoods. It would be questionable to weigh

up the different implications, as they do not necessarily affect the same people. Moreover, drastic individual experiences such as losing land against one's will are unlikely to be made up for by the work opportunities on offer and new infrastructure in the region. Poorer households, who lose land under adverse conditions, and future generations of households with limited land, are likely to suffer most in terms of their land-based livelihood strategies. This points to a risk of widening social differentiation among rural communities.

### ***3. How do local people perceive foreign land investments?***

My study brings in local stakeholders' perspectives that are often neglected in other research.

- Many villagers deliberately agreed to the land deals and the accompanying investments due to their expectations regarding infrastructure and labour opportunities. At an initial stage of the land deals, at least, they saw the investment projects as a unique chance to improve their livelihood situation, and emphasised the limited alternatives that existed.
- Positive perceptions and related decisions are bound to certain conditions. These conditions are (i) a fair land deal process, (ii) (what local people perceived to be) a sufficient availability of land that would allow them to keep their own land and land-based livelihood strategies, and (iii) opportunities to earn some additional income in the form of decent labour opportunities. The last two points are related to the people's preferred livelihood strategies, which they indicated were independent farming (though under more supportive conditions) and some occasional additional income from working as labourers.
- When these three conditions were not met, people's opinions became more critical or negative. After experiencing disappointing labour conditions or conflicts related to neglected land rights and delayed compensation payments, some villagers regretted their decision and argued that they had not had enough information to fully consider the consequences. Other villagers continued to see mainly the investment projects' positive effects.
- People did not indicate many preferences other than the three aforementioned conditions for having a positive attitude towards investors. Some interviewees would have preferred a more labour intensive crop (such as sugarcane); others appreciated forestry plantations as being 'good for the environment'. Interestingly, the origin of a company did not generally play a significant role in local inhabitants' perception of investors. If so, the preferences of either foreign or Tanzanian origin were related to assumptions that one or the other would be more inclined to follow the proper procedure and respect local people and their rights.

### ***4. How are data regarding the global land rush (re)produced and reported?***

I met many data collection challenges in my initial research into contemporary land deals in Tanzania; these were related to the complexity of land deal processes and the limited overview of land deals among the central government, but also to flawed methods of presenting and reproducing such data. In various publications, sources of data are given in aggregate or incomplete ways, making it difficult or impossible to track the primary sources of the given information. Other problems are related to the use of media sources and announcements on investors' websites. Both sources are frequently unreliable and lead to both over- and underreporting of land deals. The flaws resulted in the dissemination of inaccurate information, such as the reporting of land deals that have never materialised. Academics and policymakers must realise that knowledge about the land deal situation in Tanzania, and arguably in many parts of the world, is still less clear than certain databases and data compilations suggest – though the situation has improved in recent times.

### 7.3 Conclusion

As I have outlined, the effects of the analysed land deals vary significantly according to the context and to people's bargaining power, but they are rather ambiguous. It can be assumed that land deals under less favourable conditions – for example, in countries with less progressive land laws, or with investors who care less about maintaining good relations with local people – have worse consequences for local communities.

Significant and predominantly positive outcomes for local people are only to be expected when a bundle of conditions are met:

- First, land acquisitions would need to be restricted to areas with ample land availability, so that they would *not* necessarily interfere (to any great extent) with existing land-based livelihood strategies. It is, however, rare to encounter abundant land in large or connected plots that is suitable for investment;
- Second, it is essential that any land rights, including individual and common customary rights, be acknowledged by the national government;
- Third, decisions regarding land deals should be taken locally. This also requires functioning local governments that are accountable to their constituencies;
- Fourth, it is crucial that there is a political will and a commitment by government officials at all levels to implement the provisions of the law and to support the local population in their negotiations with investors. Further, the existence of strong civil society organisations that keep an eye on the government and step in in favour of local populations if necessary is vital;
- Fifth, all social group of the local population need to be well-informed about their land rights and about the potential risks of a land deal; and
- Sixth, host governments need to maintain a transparent and critical discourse about land deals.

In practice, this bundle of conditions is rarely met in the targeted countries. Hence, even though there might be some positive effects associated to a few particular land deals, the global land rush, in its present form, is highly questionable and poses a severe danger to the livelihoods of rural people.

### 7.4 Recommendations for policy and further research

The dynamic and non-transparent nature of the global land rush calls for continuous investigation. In doing this, the use of precise and rigorous methods of collecting, presenting and reproducing data is crucial. This may be laborious and time-consuming, but it allows important quality checks and follow-ups (Research Paper IV). Generous knowledge-sharing among researchers, with representatives of governments and civil society organisations and with the interested public is also desirable in order to provide a basis for related political decisions, social actions and upcoming research projects.

In view of the findings regarding land deals' conflict-ridden processes and ambivalent outcomes even in comparatively positive cases (Research Papers I and II), I agree with critical scholars and civil society organisations that are campaigning for alternative rural development pathways in the Global South or for a moratorium on large-scale land acquisitions (some examples are De Schutter 2011; German et al. 2013, p. 15; IPC 2011; see also Seufert 2013, p. 185 and Research Paper III). At the same time – in the absence of any possibility of halting the global land rush for the foreseeable future – there is a need for strict regulations for ongoing and forthcoming land deals in order to encourage more socially acceptable processes and positive implications for rural people.

My detailed analysis of the power strands and bargaining positions during land deal processes (Research Paper I) provides indications for potential measures in that regard. I recommend that more in-depth case studies be undertaken in order to gain a better understanding of my demonstrations, and also perhaps of additional power strands in other contexts.

In the following sections I outline policy recommendations (based on the aforementioned conditions and beyond) and highlight specific further research needs along with them.

### *Favourable land laws and local governance*

This research has pointed out that favourable national land laws represent a necessary – though not sufficient – basis for fairer land deals. The following points are crucial:

- (i) Full recognition of all customary land rights, namely those of individuals and of communities, and both registered and unregistered ones, by the national legislation.
- (ii) Establishment of decision-making regarding land deals at local levels in a way that gives a voice to all affected holders of land rights.

The land laws of many countries, often whole legal regimes, would need to be adapted accordingly<sup>40</sup>. Further, meaningful and socially acceptable decision-making at local level also requires:

- (iii) Functioning local governments that are accountable to their constituencies.

In many countries, the realisation of these demands would require fundamental changes in governance, which takes political will and a lot of time. The 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security' (FAO 2012)<sup>41</sup> provide a valuable basis in this regard. Their adaptation and national implementation needs to be encouraged (see also Seufert 2013; Sulle and Hall 2014).

### *Participatory land use planning*

As highlighted in Research Paper III, detailed land tenure analysis and planning should be considered as a mandatory precondition for any land deals. This process should first include a careful analysis of local land uses and rights, including those of pastoralists, women and other potentially vulnerable groups (see also the recommendations in the Voluntary Guidelines, Section 7.3 in FAO 2012). Second, it should establish whether or not there are land reserves that can be provided to investors without compromising the local land needs of the present and future generations.

Participatory land use planning at village level, as foreseen by Tanzania's legal regulations, could serve as a something of a model. However, in Tanzania, '...the resulting plans often relied on 10-year projections of anticipated use to determine future land needs, in stark contrast to the 99-year renewable land leases being negotiated by prospective investors' (German et al. 2013, p. 10). The procedures need improving in this regard. More research is recommended on the ongoing village land use planning in Tanzania and how this, where implemented, may influence land deal decisions. Anecdotal evidence I collected during my research points to interesting findings in this regard.

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<sup>40</sup> For example, only a small number of African countries feature remarkable laws regarding the recognition of common property rights, yet, 'in no case in a foolproof manner' (Alden Wily 2011, p. 745).

<sup>41</sup> The Voluntary Guidelines are confirmed by the recently endorsed 'Principles for Responsible Investment in Agriculture and Food Systems' (CFS 2014) which refer to them regarding tenure issues (Section 25 in CFS 2014).

### *Sensitisation of government officers and other intermediaries*

It is not only the legal framework that influences how land deals are implemented, but government (land) officers' knowledge, values and convictions too. Land investment projects are shaped by the officers' ideas about agrarian development, their acknowledgment of customary land rights and the understanding of their own roles for example. In some countries, the recognition of plural legal orders of land needs to be strengthened to reduce dismissive attitudes towards local customs and land rights, for example by adapting training courses for government officials<sup>42</sup>. Further, national development discourses need to be broadened to allow for the expression of critical views of the often-dominant neoliberal development model (see below).

Generally, there needs to be greater recognition of the pivotal role of intermediaries – such as national, regional and local politicians and officials, as well as civil society organisations and businessmen – in the realisation of land deals. These intermediaries might have differing characteristics and relevance, depending on the legal setting and the overall context in a given country. With a few exceptions (Sud 2014 on India; and to a certain extent Evers et al. 2013b; Fairbairn 2013 on Mozambique; Schoneveld 2013), this issue has not been taken up satisfactorily, and more research is necessary to understand the role of these 'missing middlemen'<sup>43</sup>. My data on government officials' role in Tanzania, though limited, suggest a certain tension between politicians who want to enforce land deals and government officials, often in subordinate positions, who are responsible for making sure that legal procedures are followed – a hypothesis that could be examined in further studies.

### *Empowerment of local people before and during land deal processes*

Overall, power relations during land deal processes must be better balanced in favour of local people. This might be pursued by providing the affected villagers with detailed knowledge about their land rights and the potential risks of the land deals, which would enable them to take informed decisions. In the current situation in Tanzania and elsewhere, where government officials are not necessarily neutral supporters of villagers (e.g. as land deals are promoted by the national government), external backing would be helpful, e.g. from civil society organisations that conduct preparatory training sessions beforehand, or by lawyers that assist the villagers during the process.

There is a need for further research into the power positions of different groups of local people vis-à-vis investors during the land deal processes in different contexts. In Tanzania, it is recommended to focus in particular on the position of women and their limited participation in decision-making, and on pastoralists and internal migrants, who might not (yet) be registered in a village and are thus legally excluded from the decision-making process.

### *Critical views of large-scale land deals and promotion of other investment models*

The sometimes inconsiderate and unconditional legitimisation of land deals by host governments based on (agrarian) development discourses – supported by international organisations such as the World Bank – must give way to more critical perceptions of large-scale land investments. Public discourses must also shed light on the land deals' multiple risks. Further, governments

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<sup>42</sup> An innovative approach followed by the Tanzanian NGO Haki Ardhi addresses civil servants and politicians alike. In joint workshops for these stakeholders at district and ward level and at village level, Haki Ardhi provides information about politicians' and officials' duties and responsibilities, as well as the limits of their roles, in an attempt to ensure that land laws are implemented better and that less interference among different actors takes place. This is likely to be a challenging enterprise, as it is far from easy to get different stakeholders to commit to working together on such a delicate issue. Analysing the response and the potential effects of this approach would make an interesting and potentially rewarding research project.

<sup>43</sup> This expression refers to the catchy title of Sud's recent article: 'The men in the middle: a missing dimension in global land deals' (Sud 2014).

should promote a range of different investment models, as recommended in the Voluntary Guidelines (FAO 2012, Section 12.6).

In Tanzania, it seems that the government is currently developing a more nuanced picture of land deals based on its recent experiences with a large number of foreign investors. The plans it has announced to limit the land size of individual deals and to encourage out-grower models instead of large-scale plantations point in this direction, as well as the 'land for equity' model it has been promoting of late. In the latter, the land remains in the control of the original landholders and is allocated to investors for a certain period in return for a share of the company's profits.<sup>44</sup> However, the processes and outcomes of such investment arrangements still depend on many other power strands as demonstrated in Research Paper I. Whether these models will contribute to comprehensive rural development – as for example envisaged in Tanzania's agrarian development policy – or whether they lead to rural proletarianisation as feared by R. Hall (2011b, p. 206) in the case of outgrower models will need to be scrutinised.

### *Awareness-raising among investors*

My limited data about the role of local and regional managers working for investment companies suggest that they have considerable influence on land deal processes and outcomes. It makes a difference whether or not they know the cultural context, history and land rights regime, and recognise domestic regulations and bureaucratic systems. To my knowledge, the executive officers or country managers are often from foreign countries and are usually professionals with a business-related or a technical background – for example, forest engineers in the case of timber companies. They are not necessarily trained in or sensitive to social issues, intercultural differences and historical processes. Hence, they might not understand the complexity of land-property relations in African countries and other regions of the Global South and might not fully comprehend the local social and economic effects of their own interventions. Therefore I recommend that investors need to be made aware of the social context they are operating in and of the major and sometimes unintended consequences that their interventions can have. Those with a rather centralistic view of legal land systems need to learn about the existence and relevance of customary land rights and plural legal orders. A potentially promising way of addressing such issues is to speak the language of business to them, highlighting the potential economic loss to investors if they do not consider certain issues. This has been attempted by means of a publication commissioned by the Rights and Resources Initiative, which explains the financial risks of ignoring tenure issues to potential investors (The Munden Project 2012). Another example is an FAO study (Liu 2014), which emphasises that land acquisitions are not necessarily the best business models for investors, from an economic point of view, due to the high risks of conflicts and negative reputation.

There appears to be little detailed knowledge of investors' perspectives and their actual practices during land deals. It could be helpful to have further research into the characteristics, motivations and roles of the investors' implementers on the ground. However, my experience of one of the companies refusing to participate in my research shows that a lack of transparency on the part of investors might complicate such endeavours.

### *Consumers' scope of action*

Finally, one should not overlook the role of consumers. Consumers can considerably influence the global land rush in two ways. First, they can put pressure on companies to assume their corporate social responsibilities, either by supporting of civil society campaigns or through

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<sup>44</sup> Information about the 'land for equity' model has been provided by a TIC official in an interview with Locher in 2013; see also Kiishweko (2012) and footnote 30 in Section 4.1.2 for legal provision to this model. However, in light of the Tanzania's investor-friendly position in its overall agrarian development policy (Kilimo Kwanza) and the related Southern Agricultural Growth Corridor of Tanzania (SAGCOT), it needs to be seen whether the government will really implement the announced measures regarding land deals.

political action in the investors' home countries. This is already having some effects in the textile sector and should be expanded to business sectors involving land deals (Zoomers and Kaag 2014, p. 215). In Switzerland for example, an association of more than 50 civil society organisations is currently launching the 'Popular Initiative for Responsible Business'. If this is adopted by voters, due diligence regarding human rights and the environment will become mandatory for Swiss companies investing abroad (Recht ohne Grenzen 2015).<sup>45</sup> Second and lastly, consumers purchase 'land-consuming' products: palm oil and meat, (agro)fuel for mobility, pensions and other funds with high profits and little respect for social and ecological standards, among others. Questioning and changing these consumption patterns can make a real contribution to a fairer and more sustainable use of land.

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<sup>45</sup> Another example from Switzerland is a law that grants tax exemptions to environmentally friendly fuel from renewable sources on the proviso that the fuel production complies not only with ecological, but also with specific social standards, with a particular focus on food security. This has apparently led to a situation whereby no agrofuels have yet been sold on the Swiss market, but only biofuels from biomass such as vegetable waste oil or wood waste (Curia Vista der Bundesversammlung 2011; EZV 2008).





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## **Part II – Research Papers**



## Paper I

Locher M., Müller-Böker U. 2014

**“Investors are good, if they follow the rules” – Power relations and local perceptions in the case of two European forestry companies in Tanzania**

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# “Investors are good, if they follow the rules” – power relations and local perceptions in the case of two European forestry companies in Tanzania

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**Abstract.** The rapidly increasing interest of foreign investors in land in the global South, also termed *land grabbing*, has been widely discussed as potentially supportive, but often rather harmful for local populations. Combining a critical livelihoods perspective with access theory and a bargaining model, this study scrutinizes local people’s perceptions of the land investments, power relations during land negotiations and intra-community differences. By analysing two European forestry companies in Tanzania, we have chosen a sector and a country with presumably more positive outcomes for local populations. The deals resulted in not only labour opportunities and infrastructural improvements, which are mainly perceived as positive, but also cases of violated land rights, inadequate compensation and decreased food security. Hence, even under favourable preconditions, the consequences for local people are ambivalent. With this study, we contribute to a differentiated analysis of the contested role of *large-scale land deals* in contemporary rural development.

## 1 Introduction

The rapidly increasing interest of foreign investors in land in the global South is a prominent phenomenon of new rural dynamics, often termed *global land rush* or *land grabbing*. Large-scale land acquisitions, mostly in the form of long-term leases of land, aim mainly at food and biofuels production for export as well as at speculation. They are related to drivers such as the financial and food markets and climate policies (Peters, 2013). Transnational land acquisitions have been widely discussed as potentially supportive, but often rather harmful for local populations, particularly smallholders. Concerns include violated land rights and lack of access to land-based natural resources for local people, resulting in decreased food security and ultimately the replacement of smallholders by badly paid labourers and unemployed landless poor (Cotula et al., 2009; de Schutter, 2011; Li, 2011). Yet, land deals should be portrayed neither as simply “providing much-needed capital and technology for third world agricultural production, food security and employment” nor as “neo-colonial scrambles for land and resources conducted by predatory investors at the expense of marginal popula-

tions abroad” (Wolford et al., 2013:191–192). Instead, more in-depth case studies are needed that provide a nuanced analysis of the interaction of the involved stakeholders and bring in local views (Smalley and Corbera, 2012; Edelman et al., 2013).

This article aims to contribute to this debate with insights from two case studies of forestry projects in Tanzania. We argue that it is particularly crucial to look at how land deals are negotiated. Power relations between investors and local people are usually unbalanced in favour of investors (Borras Jr. and Franco, 2012:54). However, there are also cases where local people have considerably influenced investment projects (Smalley and Corbera, 2012). By employing access theory and a bargaining perspective, we contribute to a more specific understanding of the balance of powers in the negotiation process. Further, we present the local people’s views, and consider their heterogeneity in the power analysis. Hence, we address the observation of Evers et al. (2013:4) that “... the sentiments of the ‘local population’ are hardly homogeneous and often absent from the debates”.

We have chosen the case studies deliberately with the aim of analysing large-scale land acquisitions with potentially

positive consequences. By looking at these cases we add to a more complete picture of the global land rush. While much of the literature on the land rush examined land deals related to food or biofuels production, less attention has been paid to forestry plantations. This is despite the fact that large-scale forestry plantations make up a substantial share of the global land rush and predictions that the demand for land for industrial forestry is likely to increase considerably in the next two decades (Lambin and Meyfroidt, 2011; Kröger, 2012). Forestry plantations are not only profitable due to their wood products but also as providers of carbon sequestration certificates that can be sold on the global market of greenhouse gas emission reductions. They are long-term, highly vulnerable investments, prone to fires and illegal harvesting. Therefore, we argue that forestry companies depend to a greater extent on the acceptance of the local population than other companies. Representatives of the examined companies emphasized that applying *corporate social responsibility* is a worthwhile strategy. This might be even more relevant for investors, such as the ones examined, who want to engage in the trade of emission certificates and need to observe international social and environmental standards.

Tanzania was chosen as case study country owing to its relatively abundant land availability (Deininger, 2011) and its laws recognising customary land rights (Alden Wily, 2012). While both analysed cases focus on forestry plantations in Tanzania, they differ in terms of local land availability, type of acquired land (individual or communal land holding) and offered compensation (in cash or in kind).

In the following, we first give a brief clarification of the conceptual and empirical approaches used in the study. After explaining the political and legal context of transnational land deals in Tanzania, we present the analysis of our case studies. The article closes with a discussion of the findings and concluding remarks regarding the land rush phenomenon.

## 2 Conceptual and empirical approaches

As an overall approach, we engage with a critical livelihoods perspective (Scoones, 2009; Geiser et al., 2011; de Haan, 2012), focusing on daily practices and experiences of poor people. With this, we bring in the perspective of those most affected by land deals. To unravel the powers that shape the land deal decisions, we combine access theory with a classical bargaining power perspective. The access theory of Ribot and Peluso (2003) helps one to understand how people gain, maintain and control access to certain natural resources. Access, "the ability to benefit from things" (Ribot and Peluso, 2003:153), is constituted by a bundle of strands of powers, also termed access mechanisms, that people or organizations hold or can draw upon. The presented power strands refer to both rights based and other structural and relational means of access, such as social identity (gender, ethnicity, etc.; see

ibid., 170–171), and are often intertwined. The access theory helps us to analyse a broad range of factors that shape access and to understand why certain people are not included in decision-making. For the analysis of concrete negotiations of the land deals, we use elements of the bargaining power model developed by Yan and Grey (1994) based on classical bargaining and resource dependence perspectives (see also Inkpen and Beamish, 1997). The model looks at the relative bargaining power of parties in relationships formed on a voluntary basis. While it was developed to analyse international joint ventures (which is technically speaking not the case here), we argue it can nonetheless be applied in our case studies based on the long-term collaboration or at least acceptance that is needed between forestry companies and local people. The model distinguishes context-based elements of bargaining power such as the involved bargainers' alternatives to the deal, and resource-based components, e.g. land, money or labour, committed by the parties to the cooperative relationship. Bargainers committing crucial resources that are difficult for the other party to replace have high power in the negotiations, as they can use them as leverage. Thus, the bargaining perspective is useful in understanding the relevance of different elements of power in concrete bargaining situations.

The analysis is based on more than 150 qualitative interviews, mainly with local people from different backgrounds, and with key persons and state officials from the local, district, regional and national level. Group discussions were conducted with groups of men and women in three villages in each case study site. Several meetings were also held with staff of the company in case study B, while in case study A the contact to the company was limited to a few initial meetings and later refused. Fieldwork took place during 2010, 2011 and 2013.

## 3 Transnational land deals in Tanzania: political and legal context

Like many other developing countries in recent years, Tanzania has attracted a number of foreign investors interested in land. Tanzania has reportedly leased out an area of around 200 000 to 1 000 000 hectares. While numerous investors headed for biofuel projects, many of these projects have been abandoned, mainly due to financial constraints. The focus of the more recent investment endeavours lies rather on food production. Further, there are few forestry projects of transnational companies, of which two have been chosen for this study (Sulle and Nelson, 2009; Locher and Sulle, 2013; Land Matrix, 2014).

The Tanzanian government has followed a policy of attracting foreign investors as part of its strategy for economic growth for around three decades and established the Tanzania Investment Centre (TIC) to encourage and facilitate foreign investments. National government officials (interviewed

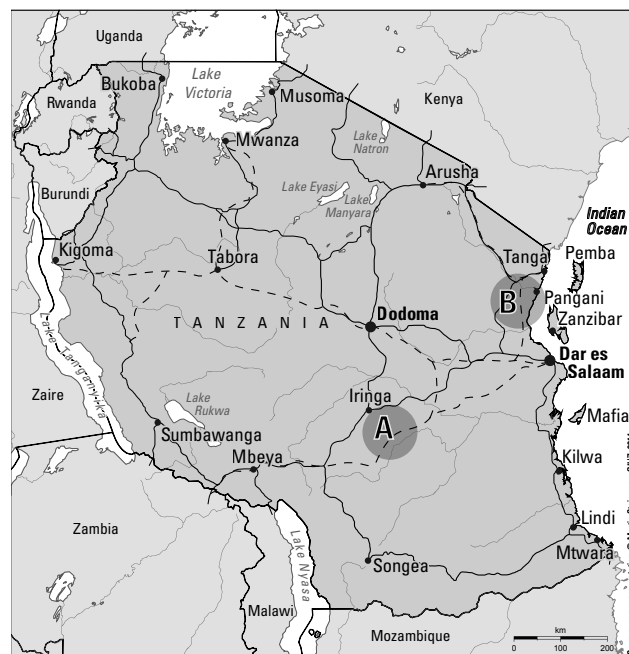
by Locher, 2010, 2011) argued that the rural areas in Tanzania could benefit from such investments in terms of labour opportunities, improved agricultural technologies and infrastructure. However, due to numerous land disputes, public pressure and deflating experiences with failing projects, in 2010 the government published guidelines which regulate and limit biofuel projects, and reportedly is in the process of establishing ceilings which would limit the size of future land deals for any agricultural purpose (Hultman et al., 2012; Kiishweko, 2012).

Tanzanian land law, regulated mainly by the Land Act and the Village Land Act of 1999, is relatively progressive in terms of respecting customary land rights (Alden Wily, 2012). Land in rural areas usually falls in the category of *village land* and is administered by the village council, on behalf of the village assembly, applying existing customary law. This is recognized by the state whether it is in written form or not. Village land may include land plots, which are given to individuals or households for permanent use and may also be inherited or sold (*de facto* ownership<sup>1</sup>) as well as common land to which all villagers have access to (e.g. forests), and barren land, which is considered as land reserve for future generations (URT, 1999a, b). Though the land acts have been enacted in 2001, they are still not enforced and practised everywhere (Pedersen, 2010) and the procedures regarding land deals are implemented only partially (Vermeulen and Cotula, 2010).

The current procedure for land acquisition is lengthy and onerous. Foreign investors cannot lease village land directly. Land deals are only possible if the land is transferred to the category *general land*, which is under the jurisdiction of the Ministry of Lands and Human Settlements Development (in short: Ministry of Lands). This process requires the village assembly's agreement<sup>2</sup>, documented by meeting minutes. Further, the involved parties have to agree on the compensation. Compensation should be based on market value, estimated by a government expert, and should be paid for land and *unexhausted improvements*, such as crops or trees. Finally, after several steps, the Ministry of Lands on behalf of the President enacts the land transfer.

<sup>1</sup>Despite the villagers' possibility to have *de facto* ownership of land, in the following, we use the term *landholders*, to accommodate the fact that legally, all land in Tanzania is public land vested in the president, who owns it on behalf of the whole nation (URT, 1999a).

<sup>2</sup>To be precise, for the transfer of areas larger than 250 hectares, the village assembly only gives a recommendation to the president, who makes the final decision; however, in the cases known to us this recommendation was never ignored in a way that an area larger than that agreed on by the village assembly would have been transferred. In some cases the opposite happened: the District Land Allocation Committee decreased the area to be transferred because it felt that otherwise the villagers would not have enough land left for their own (future) use.



**Figure 1.** Map of Tanzania displaying the case study areas. A: New Forests Company (NFC) in Kilolo district, B: Tanga Forests Ltd (TF) in Pangani district.

## 4 Findings from the two case studies in Tanzania

### 4.1 The two investors and their forestry projects

#### 4.1.1 Case study A: the project of the New Forests Company in Kilolo district

Kilolo is a hilly district in the Iringa region, in the Southern Highlands of Tanzania (cf. Fig. 1). It has favourable conditions for the permanent cultivation of several food crops. Many households also plant timber as savings, particularly on their less fertile or steep plots of land.

In 2006, a Member of Parliament from Kilolo introduced the New Forests Company (NFC) to his district. The UK-based NFC presents itself as a sustainable forestry enterprise, with plantations producing wooden feed materials in Uganda, Mozambique and Tanzania, and aiming to produce carbon certificates (NFC, 2014). Representatives of the NFC visited 12 villages to promote their investment. In some villages the company's request for land was declined because of a lack of land. Other villages welcomed the investor. By early 2013, the NFC had acquired 6300 hectares of land in seven villages (Table 1). The transferred land had mainly belonged to individual households. Some of the land had been permanently cultivated; other land lay fallow, mainly due to its remoteness. Landholders were compensated with cash. Further, the investor promised to support the local communities with infrastructure improvements, distribution of seedlings, and nursing training. In 2009, the company established a tree nursery and its first plantations of pine and eucalyptus

**Table 1.** Share of village land provided to the investor in the Kilolo district (case study A) (based on figures obtained from the Kilolo district land officer in 2013).

Village	Total area of the village (ha)	Area provided to NFC (ha)	Share of village area provided to NFC
Magome	18 636	(one plot covering areas of all three villages)	2295 together 4.1 %
Kidabaga	35 007		
Idete	1873		
Isele	8272	(one plot covering areas of both villages)	3852 together 22.5 %
Kising'a	8885		
Ukwega	8212		122 1.5 %
Ipalamwa	4275		63 1.5 %
Total	85 160		6332 7.4 %

(personal communication by Locher with district land officer in 2013; Locher, 2011).

#### 4.1.2 Case study B: the project of Tanga Forests in Pangani district

Pangani district is located on the northern coast of Tanzania (cf. Fig. 1). The local people practise small-scale subsistence farming, fishing and livestock keeping. Large areas are covered by bush land, partly used by pastoralists for grazing and by villagers for collecting firewood and grass that is used for weaving mats and other products.

The Norwegian company, Green Resources SA (GRAS) has been running large tree plantations in Iringa region since the 1990s. It produces and sells carbon certificates on the voluntary market (GRAS, 2013). In 2005, it established Tanga Forest Ltd (TF) as a subsidiary with the aim of expanding its plantations to Pangani and other districts in Tanga region. In 2006, TF started acquiring an area of around 7500 hectares in six villages in Pangani, mainly village reserve bush land. TF did not pay any compensation in cash, but constructed different infrastructural buildings in each village. It established a nursery and teak and eucalyptus plantations. In July 2012, GRAS closed down its subsidiary TF. The reasons given were the weak performance of the planted seedlings due to unsuitable soil and changing weather conditions as well as conflicts around land issues (personal communication by Locher with former Plantation Operations Manager in 2013).

#### 4.2 Local people's perceptions of the land deals and their consequences

The case studies show that local people did not consider foreign investors as intruders and new colonists (as might be expected; see for example Via Campesina, 2012), but welcomed them, based on – at least partly justified – expectations of getting employment and highly needed infrastruc-

ture or other benefits as compensation for their land. In principle, both types of compensation – in cash for individual land (in Kilolo) and in kind for communal land (in Pangani) – were appreciated. Individuals who received cash used it for varying short-term to more sustainable purposes based on their different livelihood assets and strategies. Many villagers were planning to use the money for their children's school fees. Others bought new land or invested in improved housing. Some households spent the money on consumption or health-related needs. Many people welcomed the compensation in terms of new infrastructure, particularly in Pangani (dispensary, village office, water tank, etc.) but also to a limited extent in Kilolo (maternity ward and school building improvement). They highlighted that the Tanzanian state did not have enough funds for providing such facilities. Interviewees further emphasized that there were no or not enough employment opportunities in their region and that "We have young people, they need to get a job". They therefore considered private investments necessary.

There are three crucial preconditions that determine the rather positive view of many local people. First, villagers strongly expect the investors to follow the proper procedure, to respect local land rights and provide the agreed compensation in time. Asked whether they would prefer foreign or domestic investors, interviewed villagers usually answered that this did not matter: "Important is that the company does the right thing, not the origin". This reflects the local people's strong dependence on the enforcement of the land law during the negotiations (discussed below).

Second, local people expect to continue their land based livelihood strategies. Thus, whenever possible, they only provided land to the investors that was of no current and direct use to them. Indeed, many people did not feel any direct change to their land-based livelihoods. One interviewee stated: "I cannot see anything bad. The land was not being used". However, there were cases in which villagers lost land against their will or were forced to sell due to hardship situations, and some of them reported decreased food security as



a consequence of their reduced or lost possibility to produce food. A disappointed villager summarized these two crucial issues as follows: "The investor would be no problem, if they would follow the agreement. And if they would leave some land for us."

Third, local people wish to get additional labour opportunities to diversify their livelihood strategies. Both companies offered new income opportunities in the form of daily labour. However, the work load and conditions were considered very hard in case study A, and the salary low and often paid with delay in case study B. Mainly members of the poorest households accepted these insecure labour options and perceived them as a slight improvement for their livelihoods.

After having experienced tensions and conflicts related to omitted land rights or delayed compensation payments (discussed below) or when being deflated by unfavourable labour conditions, some affected people had a more nuanced perception or even turned against the companies, as the following two statements illustrate: "They have taken my land. I don't want to have any relation with them." "It is not a good deal, because the investor gets more than the villagers." However, a considerable part of the population continued seeing at least some benefits from the investments. Accordingly, many villagers were disappointed when TF closed down its activities.

#### 4.3 Strands of power shaping the land deal processes

##### 4.3.1 Tanzanian land law in the context of complex land tenure situations

Tanzanian law concerning land transfer, giving considerable decision power to the local population, has been followed in most of the analysed cases. Depending on the situation, entire villages and individuals participated in the decision-making process. Some also took the decision *not* to give land. Hence, in most of the cases the existent land rights were respected.

However, in some cases the local people have been excluded from the decision-making process. In other cases, they have been involved, but under unfavourable conditions. This happened particularly when complex land tenure situations prevailed. In Pangani, for example, one village had provided land to TF that belonged to two neighbouring villages. The conflict was brought to the Ministry of Lands, whose investigations confirmed the village boundaries, but only after the company had already established plantations on that land. The affected two villages could not take any decision in this regard, and had not received any compensation by 2012, when TF closed down. In another village in Kilolo, where village reserve land was sold, it turned out that part of the plot had been in use by people from the neighbouring village, based on longstanding local agreements. When the landholders realized that they had lost their land to the NFC, they appealed to their local leaders to claim it back. After around two years, the landholders were finally compensated, but not given back their land (Locher, 2011). An affected in-

terviewee stated: "We don't have enough freedom to use our land rights", thus referring to other power strands besides the legal mechanism that shape the land deal processes.

##### 4.3.2 Government authorities' twofold influence in the land deal process

Government authorities, be they politicians or civil servants, often act as intermediaries between investors and local populations. They are generally highly respected among the villagers due to their educational level and expert positions (cf. also Chachage and Baha, 2010). As Ribot and Peluso (2003:169) state: "Expert status also carries authority that may allow individuals to manipulate others' beliefs or the categories of resource access and use". Hence, first, government authorities play a key role in the decision-making for the land deals. During the promotional tours in Kilolo, for example, district leaders accompanied the company representatives. This *entourage* not only provided information about the procedures for the land deals but also enhanced the negotiated project's legitimacy and acceptance. A district land officer summarized the way how they approached the village assemblies as follows: "We told them: there is this company that wants to acquire land and you people have to provide your land". In both case study areas, some politicians from the local to the regional level played a double role. Investors hired them as land deal promoters; this was not always transparent to villagers. Being or having been well-known political representatives, these consultants had considerable influence on the villagers' decisions. A female interviewee in Kilolo stated the following: "These investors always come with district or regional leaders, they put pressure on us." Also in the above-presented case of conflicts around village boundaries in Pangani, a local politician employed by the company was involved.

Second, the influence of district officials and politicians is also crucial in the implementation of the legal process, including the clarification of complex land tenure situations and the settlement of the compensation. In both case studies, the clarification of land rights was not sufficiently carried out by the local leaders and district officials, leading to the above-mentioned conflicts. For compensation payment in Kilolo, the district valuer estimated the value of the land to be an average price of TSh 100 000/acre in 2008 (around EUR 135/hectare), which was paid during the first land transfers. However, the NFC representatives went on further promotional tours without district officers to request additional land. With the help of their hired consultants, they convinced a number of landowners to accept compensation clearly below market value, namely TSh 25 000/acre. In Pangani, the district officials made no estimation of the value of the land. Hence, it remains open whether the negotiated compensation was adequate or not.

In sum, by having highly respected politicians and sometimes also officers on their side, the investors benefit from

their influence on local people's decision-making and their power to shape the implementation of the land deal process. This illustrates that "Access to authority is an important juncture in the web of powers" (Ribot and Peluso, 2003:170). Investors often have better access to authorities than local people, but access also differs among the local population.

#### 4.3.3 Legitimizing discourses

The decision regarding land deals is influenced by the Tanzanian government's policy of encouraging land-based investments as part of a rural development strategy. Ribot and Peluso (2003:169) pointed out that "discourse and the ability to shape discursive terms deeply influence entire frameworks of resource access". By reproducing the national development discourse, government authorities at all levels provide legitimization for land deals. Investors draw upon this discourse to support their corporate social responsibility rhetoric during the promotional tours. In order to convince local people to provide land, both companies promoted a long-term, development-oriented "partnership" between themselves and the local population. The minutes of the general assemblies in several villages in Kilolo give some hints about the message the participants must have taken home from these promotional tours. They reveal a long list with a number of "purposes" of the NFC, which solely consist of benefits for the local people, such as general poverty reduction, protection of environment, employment opportunities and investments in infrastructure.

A counter discourse in this context, traceable in academic debates, is the concern about sufficient remaining land for future generations. However, only a few Tanzanian villagers and land officers referred to this discourse in specific land-scarce situations, but never as fundamental argument against land deals.

#### 4.3.4 Unequal access to knowledge about land rights

While investors have access to legal experts and can get support from the TIC in land rights issues, local communities have usually only very limited knowledge about the land law. It is the task of government officers to inform them about the legal procedures and their rights, but it seems that they did it to a varying and usually insufficient degree. Hence, in both case studies part of the individuals and villages gave away an important livelihood asset without being fully aware about the consequences. In Pangani, most of the villagers, including village leaders, were not aware that the land which was transferred to the category general land – to be provided to TF – was not in their hands anymore, but under the authority of the Ministry of Lands. They were convinced that they could withdraw it from the investor whenever they wanted. Another confusing matter was the unit of measurement. While in the rural areas *acre* is the common unit, investors and district staff used *hectare* – a considerable dif-

ference of which not all villagers were aware. They also did not know that land should be compensated based on market values. In Kilolo, when problems arose in the case of village land that belonged to neighbouring villagers, most local people and their leaders did not have the necessary knowledge on how to reclaim their rights in time. Otherwise, they would probably not have lost the land against their will.

#### 4.3.5 Unequal resources and alternatives

When it comes to negotiations between local landholders and investors, the investors' resource-based components of bargaining power consist of the offered compensation and labour opportunities, while the villagers' mainly commit their land and labour. Once land is transferred local people have no legal means to withdraw it from the investor. Hence, they can only contribute their labour to the proposed partnership, a resource that is easily replaceable, as shown in Kilolo, where labourers moved in from other areas. Unequal availability of alternatives to the deal further unbalance the bargaining power of the involved stakeholders: investors, at least in an initial stage, could go elsewhere to find suitable land and labourers for their endeavour, whereas many local people have restricted mobility and feel that the proposed investment is a unique opportunity to improve their livelihood situation. Also regarding work conditions, the lack of alternatives made labourers accept the conditions offered, as highlighted by an interviewee: "they [company's managers] know that even if they pay low salary you must work on their plantation because that's the only way you can get money". The companies thus profit from the local people's comparatively weak resource-based bargaining power and limited alternatives to the proposed deal.

#### 4.3.6 Local communities' potential resistance through threat of illegal actions

In the conflictive cases where people's rights are contravened, ultimate means of resistance remain for them, i.e. the "weapons of the weak" (Scott, 1985, see also Wolford et al., 2013:195): they could harm the company by destroying their plantations. Although to our knowledge the villagers never openly threatened to employ this means, the atmosphere was very tense in the cases of denied land rights. It might have been fear of arson, combined with other reasons, which ultimately led the NFC to agree on an additional compensation payment in a conflictive case. Similar motives might have brought the TF to suspend their plantation activities in 2010 in one of the villages upon the demand of village leaders who suspected some inconsistency in the land deal process.

#### 4.3.7 Power differences within communities

Local communities cannot be seen as homogenous with regard to their involvement in the decision-making process.

They must be differentiated along different aspects of their social identity and individuals' assets such as education and financial resources, as illustrated in the following three examples.

In Pangani, it must be assumed that not all social groups had been represented equally in the village discussions and decisions. In particular, women and pastoralists were reported to participate less in village meetings, and could therefore not bring in their opinion. However, during interviews, no complaints were mentioned in this regard. In the conflictive case in Kilolo, most of the landholders have lost land against their will due to lack of awareness on how to (re)claim their rights in time. However, a knowledgeable businessman understood what was going on and managed to stop the district officials from surveying his plot for the land transfer (for details see Locher, 2011). Finally, households with a favourable combination of assets have had more freedom of decision on whether to transfer their land and under what conditions. In Kilolo, households in adverse economic conditions, be it due to a drought or personal reasons, rather accepted the deal, even when the compensation offered was low. In Pangani it became clear that the poorer households among the population that depended on labour income welcomed the investor on their village reserve land without further questioning, while members of better-off households rather raised issues such as the question of the quality of the offered compensation.

## 5 Discussion and concluding remarks

### 5.1 Towards a better understanding of processes and consequences

By analysing two forestry companies in Tanzania, we have deliberately chosen an investment sector and also a country with presumably more positive outcomes for local populations compared to land deals in other sectors and countries. It became obvious that even under these preconditions, the consequences for local people are ambivalent. Unequal power relations during the negotiations led to cases of violated land rights, inadequate compensation for the land and decreased food security in the worst cases. Further, the Tanzanian villagers involved have given up part of their reserve land for future generations, and have handed control of this land over to the national government and the investors, whose future actions are not fully predictable to them. The insights we gained go beyond the case studies. The focus on power in the negotiation process grasps power strands that play – of course with different weights – an important role in all land deals. It can be assumed that land deals under less favourable conditions lead to worse consequences for the local communities.

Besides this overall finding, our in-depth case studies have further contributed to a more differentiated picture of the global land rush in three aspects: first, in line with the liveli-

hoods perspective, we have shown that local people have agency. Many deliberately decided for or against land deals. Under certain circumstances, namely (perceived) sufficient land availability and a fair land deal process, they welcome foreign investors. However, many villagers take their decisions in a weak position. Some were even passed over in the decision-making process.

Second, it is crucial to understand the detailed power strands at play and the different bargaining positions during the decision-making and negotiation processes. Such an analysis provides us indications for potential measures to better equilibrate the power positions. Our analysis revealed the following power strands: the land law as basis for rights-based means of access, access to influential government authorities, legitimizing discourses, varying knowledge on land rights and local people's potential resistance through illegal actions. In bargaining situations, the investors' favourable resources, based on financial means, and unequal availability of alternatives to the deal play a crucial role: as long as investors have rather unrestricted access to land in many countries, villagers' offered resources to the deals are comparatively easily replaceable for the investors. Moreover, as long as rural people experience only limited support in terms of infrastructure and income opportunities from elsewhere, they have hardly any alternatives to the proposed deals, which they often see as a chance to improve their livelihoods. These factors lead to villagers having rather weak bargaining power vis-à-vis the investors.

Third, the bargaining power vis-à-vis investors varies for different groups within local communities. Relevant factors are the economic situation, education, access to knowledge, gender, livelihood strategy and other aspects of social identity. Comparatively privileged households or individuals have a lower risk of agreeing to a land deal under unfavourable conditions and consequently suffering from adverse consequences. On the other hand, poor members of the communities might make use of new labour opportunities more often than wealthier people. Yet, due to the poor working conditions, we assume no substantial poverty reduction from these opportunities (see also Li, 2011). Hence, while a broad and in-depth impact analysis is still outstanding, our results indicate a tendency towards a potential *fragmented development* (see Rauch, this issue).

### 5.2 What reactions against negative consequences of the global land rush?

In absence of the possibility to halt the global land rush, efforts should first of all be made to channel land investments to areas with comparatively ample land availability. In practice, this is very delicate, as the division between land under use and unused land is not clear cut, and many (temporary or common) uses are difficult to identify (Borras Jr. and Franco, 2010). Further, areas with ample land and with limited land often co-exist at small scale. More importantly,



the availability of unused land is generally decreasing. Also Africa, often considered as comparatively rich in unused land, has changed from "a continent of land abundance in the first half of the twentieth century to one of increasing land scarcity at its end" (Berry, 2002:639). Hence, the question of sufficient land for smallholders and future generations remains a tenuous issue. Many observers advocate a complete stop of large-scale land investments and increased support of the rural population instead (e.g. de Schutter, 2011; Li, 2011).

Second, as long as land deals continue, an attempt to reach more favourable outcomes requires a focus on the negotiations. In this context, the important role of the host governments must not be underestimated (Wolford et al., 2013; Peters, 2013). The first requirement is the general recognition of any land rights, including customary rights, by the national government (cf. Steimann and Geiser, 2012). When it comes to land deals, the involvement of (local) landholders as decision-makers is indispensable. This requires not only respective land laws and financial means to implement them but also political will and a respective attitude of government officials on all levels (Knight, 2010), in short, good governance. Then, a careful and impartial analysis of local land uses and rights, including those of pastoralists, women and other potentially vulnerable groups, should be a precondition for any land investment. Participatory land use planning at the village level, as foreseen in Tanzania, would be a potentially helpful tool in this regard, if it were implemented before any investors express their interest for the respective area. Further, the power positions during the negotiations must be better balanced in favour of the local populations, by providing them in-depth knowledge on their land rights and on potential risks of the land deals (e.g. through trainings conducted by NGOs beforehand or by lawyers that support the villagers during the process). Finally, the sometimes inconsiderate legitimization of land deals by the government based on development discourses needs to give way to a more critical picture of land investments that also sheds light on their multiple risks.

The following international initiatives address some of the above-mentioned concerns: the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (FAO et al., 2010; in short: *RAI principles*) by the World Bank Group and three UN agencies address investors and host countries. The RAI principles are voluntary, and the scope of their effects is questioned (Borras Jr. and Franco, 2010; Locher et al., 2012). The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO, 2012) have been developed in a participatory process involving FAO member countries, international organizations, the private sector and civil society. They address mainly potential host states. The guidelines provide a valuable basis, but need to be translated into concrete, effective instruments, adapted to the diverse national settings. However, good governance –

the basis to implement any of these measures – remains an issue in most of the targeted countries.

Also some host countries have become more active in better regulating land deals. In Tanzania it seems that the government is currently gaining a more nuanced picture on land deals based on recent experiences with a large number of foreign investors. Thus, the land deals might lose their as of yet nearly unconditional legitimization by the government. The announced plans to limit the land size of individual deals and encourage out-grower models instead of large-scale plantations point in this direction. There are also hints about a *land for equity* model to be encouraged in the future, where local people would not transfer their land to the investors, but allocate it to them for a certain period and gain shares of the companies' profit (Kiishweko, 2012; interview with TIC official by Locher, 2013). The possibility to withdraw land from investors would considerably strengthen the villagers' resource-based bargaining power. However, outcomes of such arrangements would still depend on many other power strands and would need to be scrutinized once implemented.

Finally, national policies of the investors' countries of origin need to be strengthened. An example is provided from Switzerland: a campaign of around 50 Swiss civil society organizations demands to make transnational land investments of Switzerland-based companies adhere to Swiss regulations (Recht ohne Grenzen, 2013).

### 5.3 Outlook

The global institutions influencing the global land rush – especially the financial market – are hardly comprehensible; thus scenarios about the future effects of this phenomenon on rural development in the global South remain partially speculative. There are hints about a slow down of foreign investments in some areas, e.g. in the biofuel sector of Tanzania (Hultman et al., 2012). A tendency away from land deals towards integration of smallholders in the global economy by contract-farming arrangements – as seems to be the case in Tanzania – is one scenario (Hall, 2011). However, the related developments and effects on rural populations must be again critically observed (see contribution by Franz in this issue).

As we have outlined, the effects of land deals differ considerably depending on the context and people's varying room for manoeuvre. Considerable positive outcomes are only to be expected under a bundle of conditions, which in practice are rarely met. The growing awareness of the phenomenon among academics and civil society organizations has led to a public outcry, which might eventually have effects on international and national policies and politics and companies' scope of action, but may also fade away unheard. On any account, one point is clear: the challenges for rural poor to cope with consequences of global actions at grassroots levels are enormous. Thus, the global land rush, as it is occurring so far, provides severe risks for the livelihoods of rural populations.

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## Paper II

Locher M. submitted

**“How come others are selling our land?” – Customary land rights and the complex process of land acquisition by a UK-based forestry company in Tanzania**

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**‘How come others are selling our land?’ – Customary land rights and the complex process of land acquisition by a UK-based forestry company in Tanzania**

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## **‘How come others are selling our land?’ – Customary land rights and the complex process of land acquisition by a UK-based forestry company in Tanzania**

The recent increase in transnational acquisitions of agrarian land raises concerns about local people’s inadequate involvement in the decision-making process, and violations of their land rights. Tanzania’s statutory land laws are comparatively progressive in terms of recognising customary land rights. According to the legislation, transferring ‘Village Land’ to an investor depends on the villagers’ approval. It is therefore interesting to focus on the acknowledgement of customary land rights in land deals in Tanzania. This study analyses the land transfer process of a UK-based forestry company that has acquired land in different villages in the Kilolo district. In the case of the village presented here, the investor had followed the legal procedure regarding decision-making for the land deal in a formally correct way. Yet interviews with various stakeholders revealed flaws at local government level that have led to a conflictive situation, with numerous affected villagers having lost their land rights – and thus the basis for their livelihoods – against their will. Among those affected are several households from a neighbouring village, whose customary rights go back to the period before the resettlements during the 1970s (‘villagization’). Employing the concepts of property rights and legal pluralism<sup>1</sup>, this article analyses the decision-making process that preceded this land transfer and illustrates how unequal social relations lead to unequal recognition of customary and statutory law. The study concludes that even under comparatively favourable conditions, there is no guarantee that local land rights are fully protected in the global land rush.

Keywords: customary land rights, statutory law, global land rush, acquisition process, Tanzania



In recent years there has been rapid growth in the number of investors acquiring large shares of agrarian land in countries of the Global South for food, agrofuel or forestry plantations and many other purposes. The investors are agribusinesses, energy and forestry companies, among others, mostly from Western, Gulf and some Asian countries.<sup>2</sup> The strong increase in such investments has provoked numerous hopes and worries regarding their impacts in the host countries. Critics are concerned about violations of local land rights, decreased access to natural resources, and, ultimately, increased poverty and food insecurity in the respective areas.<sup>3</sup> Supporters claim that the land investments entail new income options in terms of jobs or contract farming and improved technologies and infrastructure in rural areas. Yet also supporters recognise certain problems related to the land deals, but they hold that these can be minimized by improving the regulations on land deals, for example by implementing international guidelines.<sup>4</sup>

Tanzania is considered a land-abundant country in the latest World Bank report<sup>5</sup> and is thus a typical target country for recent land deals. This article focuses on the case of a UK-based forestry. While there has been lively academic and public debate about agrofuel projects in Tanzania<sup>6</sup>, there is less awareness about land deals for other plantations such as food crops and trees, although many of the suspected implications may be similar. There are only a few large forestry companies in Tanzania, but their share of land acquisitions is considerable.<sup>7</sup>

As in most African countries, customary land rights play a major role in rural areas in Tanzania. The recent statutory legislation is comparatively progressive in terms of respecting customary land rights and requiring local people's approval to land deals. It is therefore interesting to focus on a Tanzanian case study in order to see whether a favourable legal setting can protect rural inhabitants from negative implications of

foreign land deals. This study argues that it is important not only to focus on the land acquisition process, but also to analyse it in the context of the local land tenure regime – an aspect which other studies have often neglected. This paper looks at the matter from the perspective of legal pluralism so as to give sufficient consideration to complex land tenure settings.

The empirical work was mainly undertaken between August 2010 and May 2011. At that time, the selected forestry company was at an advanced stage of acquiring land. The data are based on expert interviews with government officials at national, regional, district and village levels, and qualitative interviews with local inhabitants including key persons using semi-structured interview guidelines. In the two affected villages presented in this case study, group discussions and participatory mapping exercises were also conducted and copies of the minutes of village meetings were collected. Further information was obtained in 2013 from the district land officer by telephone and email. Apart from one preliminary meeting in August 2010, the investing company did not agree to contribute to this study. Therefore information about the company is mainly derived from the company's website and from district officials and other sources. Relevant background information for this research was provided by a study conducted by Chambi Chachage and Bernard Baha of the Land Rights Research and Resources Institute (LARRRI/HAKIARDHI), a Tanzanian not-for-profit organisation, who visited the area in May 2010.<sup>8</sup>

In the following section, I will introduce the concepts of property and legal pluralism. The second section provides an overview on the Tanzanian land regime and the legal regulations related to land transactions. It is followed by basic information about the investment project and a detailed description of the land deal procedure. The

fourth section presents an analysis of the transaction process. The article ends with a discussion and conclusion.

## **1 Analytical framework for the analysis of property**

Franz and Keebet von Benda-Beckmann and Melanie Wiber describe property not as a specific right or relation such as ownership, but as a broad concept, which ‘concerns the ways in which the relations between society’s members with respect to valuables are given form and significance’<sup>9</sup>. They define three major elements in relation to property:

- (a) the social unit that can hold rights and obligations (in this case individuals, the village, the Tanzanian government and the company);
- (b) the (constructed) property objects (e.g. a given plot of land);
- (c) the various sets of rights and obligations with respect to such objects.

Property rights can be broadly divided into two categories, namely rights to use and exploit economically; and rights to regulate, allocate, represent in outside relations and make decisions – in short decision-making rights.<sup>10</sup> In many societies, land ‘ownership’ bundles a set of rights together in one social unit, i.e. landowners hold several decision-making rights and usually also use rights over a given plot of land. Rights might also be delegated. A landowner for example can assign use rights to a tenant, who in turn might pass (part of) them on to a sharecropper.<sup>11</sup>

Benda-Beckmann et al.<sup>12</sup> further distinguish four ‘layers of social organization’ in which property is expressed:

- Layer (1): cultural ideals and ideologies (e.g. neo-liberalism or communism)
- Layer (2): legal regulations (e.g. state law, customary law or religious law)
- Layer (3): social relationships (e.g. between landowner and tenant)

- Layer (4): social practices or daily interactions (e.g. inheriting land or fencing)

Since property regimes evolve over time, the four layers of such a property regime are not always fully coherent. Yet the layers are mutually interdependent and affect each other. In a specific social context, different legal regimes may coexist, each of them based on legislations such as statutory law or customary law, supported by respective sets of cultural values, and determining property relationships and practices. These regimes may coexist peacefully or be in open conflict, and may also influence each other. Such coexistence and interaction of legal regimes is referred to as legal pluralism.<sup>13</sup>

In the context of legal pluralism, people may refer to different property ideologies and legal regulations to justify and support their claims.<sup>14</sup> However, it is not enough to assert claims. The success of claims depends on the extent to which they are compatible with dominant legal order<sup>15</sup>; or, in Meinzen-Dick's and Pradhan's words: 'unless claims are accepted by a larger collectivity than the claimants they are not considered legitimate'<sup>16</sup>. The authors conclude: 'Rights are only as strong as the institutions or collectivity that stands behind them'.<sup>17</sup> In this study I used the presented concepts to analyse the local property regime and to reveal the social relations that are relevant for the recognition of customary and statutory land rights during the land transaction.

## **2 Legal provisions for allocating Village Land to a foreign investor**

### ***2.1 Tanzania's land regime and land legislation***

Tanzania's land regime is based on local laws, religious laws and German and British colonial laws. Further, during the 1970s, the resettlements under the process of 'villagization' (*operation vijiji*, introduced by President Nyerere's socialist government)

brought major changes to the land tenure situation.<sup>18</sup> In the following decades, an informal land market developed and land conflicts increased. Expressed in terms of the four layers in the presented analytical framework, property ideologies and everyday practices had transformed and required a new statutory regulation (i.e. second layer). The new law, subdivided into the Land Act and the Village Land came into force in May 2001.<sup>19</sup>

Based on former colonial law, the Land Acts retain all land as public land. Land is vested in the President, who holds the final decision-making rights on behalf of the whole nation. Citizens cannot own land, but they can own *rights over* the land, i.e. rights to occupy and use land.<sup>20</sup> Such ‘rights to occupy’ may be bought or sold, and inherited. In this article it is therefore referred to ‘landholders’, not to ‘landowners’.<sup>21</sup>

All land in Tanzania is divided into three classes with different jurisdictions. ‘General Land’ is administered by the Ministry of Lands, Housing and Urban Development (in short, hereafter, Ministry of Lands) and comprises urban areas and land that has been allocated by the central government under entitlements, e.g. to investors. Land rights granted under this category are named ‘granted rights of occupancy’ and can be hold for 33, 66 or 99 years. ‘Reserved Land’ refers to several specific types and uses of land such as forests, national parks or highways, and is governed by the relevant Ministry.<sup>22</sup>

‘Village Land’ includes the areas of the approximately 12,000 villages, representing roughly two-thirds of Tanzanian land. Village Land is managed by the respective Village Council (VC), the elected local level government of 15-25 members. The VC is accountable to the Village Assembly (VA), which consists of all residents above 18 years. Village Land can be further sub-divided in three categories *Communal village land* is used for public purposes such as schools, markets or grazing areas.

*Individual land* is occupied or used by an individual, family or group of persons under customary law. The third category is *spare land* for future communal or individual use.<sup>23</sup>

A main purpose of the Village Land Act is to protect villagers' existing rights. Existing rights in rural areas are termed customary rights. The VC shall administer the land in accordance with customary law, provided this does not violate the main provisions of the statutory law, such as the rights of women, children or the disabled.<sup>24</sup> A customary right of occupancy (on Village Land) has the same legal status like land titles to 'General Land'. Customary rights also explicitly include unregistered rights.<sup>25</sup> Tanzanian legislation can thus be termed an 'institutionalised hybrid',<sup>26</sup> a combination of coexisting customary laws and state law. It is praised as a progressive land law compared to other African countries in terms of respecting customary land rights and entrusting land management responsibilities to village bodies.<sup>27</sup>

## **2.2    *Transfer of Village Land to a foreign investor***

Non-Tanzanian citizens cannot acquire customary rights of occupancy, as these rights are only provided to citizens. They can only obtain land for investment purposes.<sup>28</sup> There are different possibilities for doing so.<sup>29</sup> The most common way is to identify suitable plots of 'Village Land', which are transferred to the category of 'General Land', whereupon the Ministry of Lands can provide rights of occupancy for investment purposes to the investor. In more detail, the usual procedure – which also applied to the presented case study – is as follows. Investors, sometimes advised by the Tanzania Investment Centre<sup>30</sup>, approach district or regional government authorities in order to identify areas with potentially suitable land. Together they visit the respective villages and inform the VC and VA about their plans. If the VA in general agrees with the project, the district land officers demarcate the respective land plot(s) and send the

relevant VA minutes to the Ministry of Lands. Thereafter, the following *de iure* process of land transfer starts.<sup>31</sup> The Ministry of Lands gazettes a notice with information about the intended transfer and sends it to the respective VC. The notice has to provide a term of at least 90 days before the proposed transfer. The VC shall inform all people that might be affected by such a land transfer in terms of losing customary land rights. The affected people can make representations to the VC or district land officers<sup>32</sup>, who shall take these into account for their further decisions or recommendations.

Based on recommendations from the VC, the VA can either approve or reject the land transfer in the case of areas below 250 hectares, and its decision is submitted to the President. In the case of areas above 250 hectares, the VA can only provide a recommendation, while the decision lies in the hands of the President. The President can order the compulsory acquisition of land, subject to the payment of compensation. However, it seems that in this context the President does not usually take a decision against the VA's recommendation.<sup>33</sup> During the VA meeting, a district land officer and the investor are supposed to be present and answer questions. Thereafter, the type, amount, method and timing of the payment of compensation have to be agreed between the government – in practice usually the investor – and the affected villagers (in case of individual land) or the VC (in case of communal or spare land). Based on a detailed survey of the land and an assessment by a qualified valuer, a compensation schedule must be prepared and approved by the central government. Finally, the transfer of the land is gazetted in a second notice and becomes effective within 30 days. Thereupon, within six months, either the government or the investor himself is supposed to pay compensation to the land right-holders. Compensation has to be paid for the value of the land itself and for 'unexhausted improvements', namely constructions, crops or trees on



the land. Additional compensation may include, among others, resettlement fees and transport allowances. The valuation shall be based on the current market value.<sup>34</sup>

### **3 The land acquisition process of the UK-based forestry company in Kilolo District**

This section first provides a brief introduction to the investment project and the region where the company acquired land, before going on to describe the various stages of the land deal and its implications.

#### ***3.1 The New Forests Company in Kilolo district***

Kilolo is a hilly district in Iringa region, located in the Southern Highlands of Tanzania. It has a humid climate with favourable conditions for the cultivation of food crops such as maize, beans, potatoes, vegetables and fruit. Many households also plant trees on some of their plots. High demand for timber in Tanzania and abroad has also attracted wealthy individuals from other Tanzanian regions who acquire land and grow pine, eucalyptus, cypress and other fast-growing trees.

The UK-based New Forests Company (NFC) presents itself as a sustainable forestry business with the aim of producing feed material for sawmills, board factories and pole treatment plants, and running energy-forestry operations based on plantations in Uganda, Mozambique and Tanzania.<sup>35</sup> The company expects ‘both attractive returns to investors and significant social and environmental benefits’.<sup>36</sup>

In 2006, the district’s Member of Parliament introduced NFC to Kilolo District. By early 2013, NFC had acquired 6,300 hectares of land in seven villages and was still in the process of acquiring more land in those communities and in one further village in Kilolo District. In most cases the deal involves individual land holdings, but in the case presented here, some village spare land was also affected. In the following section, I

shall first show how government officials and the investor proceeded, drawing on statutory law, and how this led to conflicts. Subsequently, I shall present the relevant customary tenure regime in order to analyse in more detail the land deal process and its implications.

### **3.2 *Initial steps in the land acquisition process in Kidabaga***

In October 2006, representatives of the NFC and of Kilolo District visited several villages and presented the company's plans to VC and VA meetings. According to the minutes, both of these meetings took place on 18 October 2006 in Kidabaga's case.<sup>37</sup> It is reported that even at that early stage the VC members generally agreed to welcome the investor and offered them part of their village land. The area – village spare land called Witamasiva<sup>38</sup> – is located in a sub-village roughly 15 kilometres away from the main settlement of Kidabaga towards the neighbouring village Kiwalamo. Two parts of the area had been temporarily rented out to an individual and a farmers' group respectively in order to get some revenue for the village. The information about the status of the remaining area differs depending on the source; it was unused or cultivated in parts by people from the neighbouring village Kiwalamo. However, the proposal to offer Witamasiva to the investor was presented to the VA. According to extracts from the minutes of the meeting, the aims of the NFC were presented as a long list of benefits, including 'to give better tree seedlings to villagers', 'create 10,000 jobs' and 'engage in the provision of education, health, water, etc.' besides their core activities of planting trees and processing timber.<sup>39</sup> Few concerns seem to have been raised during that meeting. However, it is reported that finally the VA agreed unanimously to provide this specific area to the NFC.<sup>40</sup>

The VA had further decided that a committee of six representatives of the village would be responsible for showing Witamasiva to the district officials. The first

demarcation took place on 17 August 2007. A survey team from the district and NFC representatives went to the respective area, together with the village committee.

According to numerous interview partners, including a member of the committee at the time, this committee under the late Village Chairman did not show the precise boundary of Witamasiva, but merely pointed at it from afar. Apparently, the committee leader did not originally come from that area and did not know it properly. Hence the land survey team demarcated a much larger area than the land called Witamasiva. Yet this only came to light later.

On the basis of the generally positive signal from Kidabaga and other villages, the government gazetted a first notice on 6 February 2008. In this notice the President proposed the transfer of Village Land to General Land in 12 villages with a total area of 14,704.7 hectares.<sup>41</sup> The actual area of land that was supposed to be transferred in each village was not mentioned, nor was any information regarding the precise area, although this is legally required.<sup>42</sup> Also, the VA minutes submitted to the Ministry of Lands beforehand do not state the detailed information, as the extent of Witamasiva was not known.

On 11 April 2008 – thus within the given period of 90 days from the publication of the government notice – the district officials provided the information about the proposed transfer to the villagers of Kidabaga at a VC and VA meeting. Interestingly, according to Baha and Chachage, the minutes of both meetings featured a space where the size of the land should have been indicated, but it was left blank.<sup>43</sup> This is remarkable, because on that date the district officials must at least have known the approximate size of the land, which they had demarcated nearly a year before.

According to the minutes, several questions were raised. A VC member reportedly asked about compensation for properties on the land, and one member

specifically asked about compensation for people from the neighbouring village Kiwalamo who were using the land. This indicates that VC members already knew or at least suspected at the time that the land transfer would affect several people, and the district officials were made aware of this. Yet it is reported that the district officials continued confirming that the land to be transferred would only include spare land managed by the VC, and that property of individuals would be avoided as far as possible. If people should nonetheless be affected, they would be compensated.<sup>44</sup> According to the understanding of a villager I interviewed in his subsequent position as Village Chairman in 2010, it was agreed that a measurement would take place first and the compensation issue would be clarified before the village and the company entered into an agreement. In this vague situation, the (potentially) affected people were reportedly not informed by the VC.

However, despite the lack of clarity about land size and potentially affected people, the minutes were obviously considered as the VA's recommendation to approve the proposed land transfer.

### ***3.3 Survey and first agreement on compensation***

As mentioned above, Village Land cannot be transferred without a prior agreement about compensation. According to a district official, the village had consented to receive compensation in cash for the used part of the land only, specifically for the trees planted by the individual villager and the farmers' group ('unexhausted improvements'). For the remaining area of Witamasiva, the village reportedly did not ask for compensation in cash, arguing that the land was not used.<sup>45</sup>

In July 2008, after the expiry of the 90-day period, the district officials conducted a survey and an evaluation exercise at the same time, thus laying the final steps for the land transfer. They placed beacons and filled in forms regarding

compensation, which were signed by the people who had planted trees and by the Village Chairman and the Village Executive Officer (VEO), an employed secretary to the VC, on behalf of the village. It was then, at the very latest, that at least the village representatives must have seen the exact boundary, as their signature is mandatory for setting up the beacons.<sup>46</sup> The total area provided to NFC in Kidabaga amounted to around 1,572.8 hectares.<sup>47</sup> However, local people seem to have been unaware of this figure.

### ***3.4 Transfer of land and arising confusion and conflicts***

At a VA meeting on 30 March 2009 the VC informed villagers of Kidabaga that their village had received 1.6 million Tanzanian Shillings in compensation. According to the minutes, a number of villagers were not satisfied with the amount nor, in particular, with the lack of clarity about the size of the land. They also complained that some land additional to the agreed area had been given to the investor for which no compensation had been paid. They asked the village government to follow up on this.<sup>48</sup>

On 30 July 2009, thus four months later, the VEO of Kidabaga invited the respective people to meet in the contested area. He found the complaints justified; the area that had been surveyed one year earlier did indeed include land held by individuals outside the area known as Witamasiva. Thereafter, on 23 August 2009, some affected villagers from both Kidabaga and Kiwalamo wrote a formal letter to the VEO, stating that they did not agree to give any land besides Witamasiva, and that they did not want to receive any compensation for the individual land, but wanted their land back. The letter should have been forwarded to the district or some other relevant body, but it is not clear whether this happened.

At roughly the same time, on 21 August 2009, the second government notice was published, announcing that the transfer of Village Land to General Land would be

effective within 30 days.<sup>49</sup> In December 2009 NFC started to clear some land in Witamasiva and planted the first seedlings. The company used the land before having received the titles of rights of occupancy from the Ministry of Lands. This seems to be common procedure in Tanzania. NFC had apparently received the go-ahead from the district government. An interviewed officer argued that the company could start their plantation as soon as the local process was settled, the land surveyed and the compensation paid.

It took several more complaints by local people before another VA meeting was held in January 2010; there, the villagers of Kidabaga confirmed their position and the VEO forwarded their complaints to the district. In February 2010 an affected villager from Kiwalamo reportedly sent a complaint letter to the Prime Minister and also managed to attract some media attention.<sup>50</sup> Finally, the district recognised the claims of the affected people. However, the land had already been deemed General Land half a year before. District officials proposed that the affected villagers should be compensated. The former landholders announced their acceptance – albeit reluctantly in some cases – at a meeting on 24 March 2010. Some former landholders mentioned that they had been urged to sign the agreement with threats that they would otherwise receive nothing, while losing the land in any case. In August 2010 NFC recognised the villagers' legitimate claims too and agreed to pay compensation to those who had been left out before. The company also consented to pay for the second survey that was required as a basis for the new compensation schedule.

The September 2010 survey revealed that the demarcated area did not just cover Witamasiva but also included areas with land rights held by around 100 individuals. It was found that about half of these rights were held by people from the neighbouring village Kiwalamo.<sup>51</sup> I shall briefly outline the history of Witamasiva in the following

section to give a better understanding of the reasons for this land property order around Witamasiva.

### **3.5 *Customary land tenure in the area acquired by the company***

The village of Kiwalamo was formed during the villagization programme in 1973. Before that, the people of the present-day village Kiwalamo had been living in dispersed settlements. Households also had their own burial places, with tombs usually marked with big trees. During the villagization process, people living around Witamasiva moved in different directions to form the villages Kidabaga and Kiwalamo. However, the border between the two new villages was drawn in such a way that all land around Witamasiva now belongs administratively to Kidabaga.

When the people moved to the place called Kiwalamo to form a village, they were instructed by government officials to rearrange their land rights. The people who had been living in the area of the present core settlement of Kiwalamo before were instructed to share their land with newcomers so that the latter could establish a new household. As the available land was not enough for farming and other uses, the new arrivals continued to use the land around their former homes in addition to their newly allocated land. In turn, people who had originally lived in the area of the current village were given land use rights in part of the areas around Witamasiva that had been abandoned by the people moving to the new village. The effect of this rearrangement was that up to the present day most households in Kiwalamo have land rights both within and outside the village settlement area, whereas a major part of the area outside the settlement belongs to Kidabaga. To the minds of local people, this exchange of land rights was not carried out in the sense of an exchange of land holdings, but rather in the sense of a permanent or long-term exchange of land use rights. In other words: people who had been living in the area around Witamasiva still consider themselves to be



entitled to that land, but part of that land is regarded as tantamount to being 'rented' to those people in Kiwalamo who in turn 'rented' part of their land to people from Witamasiva. This 'rent' or exchange of land use rights involves no payment. If a newcomer to the village (for example teachers) wished to get land, he or she needed to buy it from the original settler on that land.

From the perspective of elders in Kiwalamo, land tenure is regulated through mutual acceptance among villagers. In their view, villages are administrative institutions with no particular power over land property. Although they recognise that their land is located within the boundaries of Kidabaga, the villagers I interviewed still feel that it belongs to them.

### ***3.6 Revised land survey and compensation agreement***

In the second survey, in 2010, only a small part of around 2.8 hectares was considered Kidabaga's spare land; this was the area that had already been compensated. The remaining area of around 1,570 hectares in Kidabaga, which had been provided free of charge, was categorised as land held by individuals, both from Kidabaga and Kiwalamo. District officials I interviewed claimed that it was only then that they had realised that Witamasiva was merely a small proportion of the total area. In the renewed compensation schedule based on that measurement, the customary land rights illustrated above were taken into account in the following way. Former landholders in the area, both from Kidabaga and Kiwalamo, were listed as being entitled to compensation for land plus unexhausted improvements (crops and trees), if there were any. They made up about half of the 100 or so right-holders. The people from Kiwalamo who had been 'renting' the land were supposed to be compensated only for unexhausted improvements. Extra allowances were listed for graves. As there was no settlement on the transferred land, no related compensation had been foreseen. The total compensation

amounted to 687,645,900 Tanzanian Shillings (around USD 455,000 in 2010). There was some discussion between the village governments of Kidabaga and Kiwalamo regarding the land held by villagers of Kiwalamo. The government of Kidabaga was of the opinion that its VC, as the formal manager of land within village boundaries according to statutory law, was also entitled to compensation. Finally, it was agreed to pay compensation to the individual landholders after deducting 2% for Kidabaga.

Although the new compensation schedule had been ready since November 2010, NFC only paid the compensation at the end of 2011. According to a district official, the company was hesitating about accepting the new measurements, arguing that it was not plausible that more than 100 people had been left out in the first survey, and that the total amount would be too high in the new compensation schedule. They also tried to bargain over the compensation for standing trees that belonged to former land users. Meanwhile, on the advice from the Regional Office, the district officials were holding back the title deeds of the rights of occupancy in order to put pressure on the investor to pay the compensation.

### ***3.7 Immediate consequences for local land rights and livelihoods in the villages Kidabaga and Kiwalamo***

Part of the area around Witamasiva, although not all by far, was used when NFC arrived in 2006. Cultivation was largely concentrated on the more fertile land closer to the rivers and included food crops and trees, while some of the drier hills were used for grazing cattle.

A solution was found for the dispersed plots of grazing area that people lost; another neighbouring village gave part of its communal land as a common grazing area. The situation proved far more tense regarding land for cultivation. Since 2009 representatives of the company and the local government had told the former land users

that it would be illegal for them to continue using the land, as it belonged to NFC. In some cases the company planted its seedlings among existing crops and allowed the small farmers to have a final harvest of the standing crop. While some affected households still had land to cultivate, others, mainly from Kiwalamo, complained about their loss of subsistence farmland, reduced food security and a lack of income to cover expenditure such as school fees. Some villagers from Kidabaga shifted their activities to new land, which they rented from other inhabitants. Given that they had not yet received the compensation by then, they argued that they were unable to buy land and lost a considerable amount of money paying the annual rent.

In Kiwalamo, the agreement based on the second survey had other complex consequences. From a point of view of customary law, the people who had been living around Witasiva earlier lost all of their landholdings for which they had decision-making rights. The land within the settlement on which they have built their homes is regarded as having been ‘rented’ and is therefore less secure. The other people from Kiwalamo lost ‘only’ land use rights, albeit long-standing ones. They were therefore not compensated for loss of land, only for crops. There was no spare arable land in Kiwalamo under the management of the VC that could have been distributed among the affected villagers, and it seemed that there was also no substantial amount of individual land that might have been bought or rented from other villagers. Some of the people who were compensated for crops only (on ‘rented’ land) were said to be aiming to get back the part of their original land within the settlements that they had held before villagization. In this case, the other affected villagers who lost their original land holdings to NFC would be left without any land. They therefore argued that they would have to move away and try to find land for settlement and cultivation in another region. As they would probably be unable to find land for all the affected households in the

same place, they feared that they would be scattered around different villages, disrupting existing ties among relatives and neighbours. However, I was unable to explore this development any further within the time frame of this research.

The graves had partly been left untended and were overgrown as a result. However, ancestral burial places play a vital role in cases of accidents, severe illnesses or fatalities. According to local beliefs, people will visit the burial places at times like these and clean the area around the graves in order to appease their ancestors. The investor had promised not to touch the burial places so that local people could still visit their ancestors' tombs. When the company expanded its plantations, the local manager had asked the former landholders to show him the relevant sites so they might be protected. However, in their anger about the overdue compensation, some elders from Kiwalamo had refused to show the manager their burial places, arguing that they would do so only once they had received the compensation. The company subsequently continued its planting activities and partially covered some old burial sites. This caused great consternation among the affected people.

## **5 Conceptual analysis: 'How come others are selling our land?'**

In the area around Witasiva – which is located within the boundaries of Kidabaga, but partly used by villagers of Kiwalamo – customary and statutory land orders have coexisted since the 1970s without creating major tensions. However, their discrepancy became obvious when the investor sought to acquire the land. On the one hand, affected former landholders from Kiwalamo feel that it is their land, based on long-standing customary rights. This view is partly shared by their neighbours from Kidabaga. It is obvious that these land claims grounded in customary law were not protected. Thus an elder man from Kiwalamo asked:

How come others are selling our land?

On the other hand, some of the inhabitants and village representatives in Kidabaga feel that they rightfully decided to transfer Witamasiva – and accidentally also some area around Witamasiva; they claim that it is their village's land. One interviewee from Kidabaga said:

Witamasiva was that time [when the VA decided to give it to the investor] used by people from Kiwalamo, with the permission of Kidabaga, but only temporarily. It was generally known that it belongs to Kidabaga, and that Kidabaga could take it back when needed.

This view refers to the legislation as set in the statutory law, which views the VA as the legitimate institution for taking decisions about any land within village boundaries.

The decision-making for the land transfer followed not the customary law cited by some villagers of Kiwalamo and Kidabaga, but statutory law – though not without considerable flaws, as will be discussed in further detail below. According to Meinzen-Dick and Pradhan, it can be concluded that the legitimising institution behind the statutory law was stronger than the collectivity behind the customary law.<sup>52</sup> In the following section, I will therefore look at the law-backing institutions and stakeholders, and their relations with each other.

### **5.1     *The recognition of statutory and customary law***

When foreign investors wish to acquire land in rural areas, they draw on *statutory law* – regulations that are in the public domain, and promoted and backed by the national government. The legitimising institution behind the statutory law is obviously the state. Not only the investor, but also the villagers and VC members I interviewed generally respected the Tanzanian state and never fundamentally questioned it in our interactions.

When it comes to land issues in Kidabaga and Kiwalamo, the state is usually represented by the district officials. District officials generally enjoy a high level of respect from local people, including VC members. They have the necessary knowledge about state law, which they have acquired through formal education, and the power to implement (or contribute to the implementation of) legal procedures by dint of their position. The villagers' respect is also indicated in the minutes of the VC and VA, which refer respectfully to 'experts' from the district.<sup>53</sup> In the presented case, the Member of Parliament for Kilolo and a former member of a Ministry, who accompanied the representatives of the district and NFC in some of their promotional meetings, have further strengthened the authority of the district officials. At one stage in the process the President even came into play – namely when he, as per legal requirement, finally effected the land transfer. Affected villagers from Kiwalamo and Kidabaga were informed accordingly that the decision was 'signed by the President', as interviewees often quoted officials. The reference to this figure of authority contributed to villagers' feeling that they had no other option than to come to terms with the transfer.

The villagers I interviewed not only respected the state, but the statutory land law too. Even people negatively affected by the land deal did not question the law as such. Though they did not know much about it in detail, they expected the law to be designed in a way that it would protect their rights, if implemented properly. In sum, statutory law and its backing institution – the state and its representatives – are recognised by all stakeholders involved.

*Customary law* is sustained by villagers who have lived in the area for generations. They claim that numerous mutual and often long-standing agreements among individuals in a community constitute the land tenure order. Village boundaries have no particular effect in this matter. As I have outlined above, to some extent

statutory law recognises customary law as the main basis for land governance in villages. From the state's point of view, the VC is responsible for the management of Village Land. But the elected VC has authority from a customary point of view too. Village councillors are usually respected and comparatively knowledgeable members of the village community; this is partly because they have more regular interactions with district officials and other external people. External stakeholders usually come to the VC to identify land in a given village. Yet, as I have shown, it can be very difficult for village representatives to know about and identify all local arrangements. Thus VC members may not always be fully able to back customary rights.<sup>54</sup>

My analysis of the institutions and social relations reveals that statutory law – with its broad recognition among stakeholders, and notably respected authorities – has more powerful backing than customary law, which is only fully recognised and maintained by groups of villagers. The village government has a challenging double role in this regard, since it represents both statutory and customary laws.

## ***5.2 Flaws in the implementation of the land transfer process according to statutory law***

Statutory law was the basis for the land deal, but numerous errors hampered the implementation. They happened both at village and district levels.

- (a) The committee of village representatives approved by the VA in 2006 was responsible for showing the land to the district officials, but apparently it did not fulfil its task properly.
- (b) In the April 2008 meetings, when the VC and VA were officially informed about the intended land transfer based on the government notice, the district



officials reportedly did not inform them of the size of the area, even though the plot had already been demarcated for transfer.

- (c) After the April 2008 meetings, the VC of Kidabaga did not inform all affected villagers in Kidabaga and Kiwalamo about the proposed land transfer, even though village councillors must have known or at least suspected that holders of land rights were affected. Had the VC informed them at the time, people would have had time to raise objections within the period set by the first government notice.
- (d) Instead of taking the hints about affected right-holders in the above-mentioned meetings seriously and trying to get a clearer basis for the rest of the process, the district government interpreted the VA meeting as a sign of approval for the land deal.
- (e) The village government did not react in a timely manner to clarify and report the problems when doubts regarding the size of the land and compensation were raised at a VA meeting in March 2009, and when villagers from Kidabaga and Kiwalamo complained in different ways. By the time they finally looked into the matter, the land transfer had become effective.
- (f) When the claims of the affected people were finally accepted, one legal requirement for the land transfer – namely the agreement on compensation by all affected stakeholders – was no longer fulfilled. One could argue that the basic requirement – the VA recommendation to approve the land transfer – had also become weak or void, as the VA decision had been taken on the basis of missing and false assumptions. However, instead of restarting the whole process, the district protected the investor's land claim and strove to delivering the legal basis for the land transfer as quickly as possible by asking the former

landholders to agree to the compensation. The fact that NFC had already planted on the land – with the go-ahead of the district government – helped to strengthen the company's claim and stir up a belief among local people that the land transfer could not be undone.

Other influential issues in the process are related to the VC's role and to unequal knowledge among the stakeholders. These issues do not conflict with legal regulations regarding the land transfer, but had an impact nonetheless.

Only affected people were invited to the March 2010 meeting at which the former landholders were requested to sign the acceptance of compensation, not the entire VA. Some interviewees, including a well-informed businessman who was not personally affected, felt that the village government had done this intentionally. Without the support of the other villagers, some of whom were more educated, the landholders had less power to resist such a request. Overall, villagers' respect for the VC influenced the decision-making at the VA. This was illustrated when I asked about their first meeting with NFC. Most of the interviewees in Kidabaga did not feel that they had taken the decision of giving Witamasiva to NFC, despite having participated in the respective VA. In their view, the VC had already taken the decision and presented it to the village meeting.

Perhaps the most important weakness in the process was the unequal knowledge among the stakeholders involved. The land law foresees that villages should benefit from information provided by district officials when deciding about land transfers. In Kidabaga, the villagers and their representatives had an opportunity to question the district officials during at least two meetings of both the VC and the VA. The district officer confirmed that he had presented the necessary information about the procedure and the villagers' rights during the meetings. Yet villagers and village government

generally had a very low level of awareness and knowledge about statutory law and formal procedures to defend their land rights. I observed this throughout the interviews and the Kiwalamo villagers' failed attempt to put pressure on the investor by refusing to show their burial places before receiving the compensation is a good illustration. Consequently, several people in Kidabaga blame the village government and the government in general for not having informed them properly about their land rights. This is even more the case in Kiwalamo, where people were not involved in formal meetings at all. An elder villager claimed:

The government should have informed us people about land rights and rules before the company came. Everybody has rights. But the government just forced us.

### **5.3    *Flaws in the law***

It is unclear whether the customary land rights in Kidabaga and Kiwalamo would have been protected, even if the process had followed legal procedure as laid down in statutory law from the outset. In any case, the decision – or rather the recommendation to the Ministry for approval or rejection of the land transfer – could lawfully only be made by the VA of Kidabaga. And even if the people of Kiwalamo had been invited to the VA meeting, it would still not have been formally possible for them to take part in the decision, as they were not residents of that village. Even if the affected villagers of Kidabaga had realised the imminent loss of land, they could not have decided whether to accept the investor or not on their own. The law does not stipulate that affected individuals or households have the sole decision-making power or a right to veto; they can only contribute to the decision as VA members. Hence affected individuals could have been overruled. But at least their objections would have been included in the minutes and taken into account during decision-making at different levels. Further, affected landholders from Kidabaga and Kiwalamo could theoretically have delayed

and hampered the land transfer by not agreeing to the compensation. It would ultimately have been up to the High Court to decide on compensation but not on the transfer of Village Land to General Land as such.<sup>55</sup>

One further issue relates to potential relocation. Although the transfer of land did not lead directly to resettlement, it might *de facto* have led to landholders of Kiwalamo having to move to other villages due to lack of sufficient land for their livelihoods. The Village Land Act does not foresee such a case of ‘collateral compulsory resettlement’, and no related compensation was paid in the examined case. Both points – affected villagers potentially being overruled by VA decisions, and resulting resettlement not being compensated in any case – can thus be identified as weaknesses in Tanzanian law.

## **6 Discussion and conclusion**

This study examined the process of transferring village land to an investor against the backdrop of an analysis of the local land tenure regime. It focused on the example of a UK-based forestry company that acquired land in Tanzania – a country with a legal framework that is considered one of the best in Africa in terms of its protection of customary rights.

The case of Kidabaga and its neighbouring village Kiwalamo I have presented illustrates the importance of a legal pluralism perspective both in research and policy if one wishes to understand the complexity of such land transactions and their immediate implications for local livelihoods. It was found that customary rights only have some standing vis-à-vis external stakeholders when they are backed by statutory law. In Tanzania, statutory law protects customary law, but only as long as the latter does not go beyond village boundaries, as the statutory regulations are based on villages as units. Yet, as we have seen, for historical reasons – namely the villagization process – customary tenure regimes are not limited to areas within village boundaries. A second

limitation on statutory law's protection of customary rights is that it expects the collective decision-making of Village Assemblies to consider the customary rights of individuals, but this is not necessarily the case. The people who are affected in a particular village can co-decide, but they might be overruled, and people from neighbouring villages who are affected are not even allowed to take an active part in the decision-making.

When customary law conflicts with statutory law, the people who represent statutory law – government officers for example – and people who rely on statutory law, for example foreign investors, are more successful at imposing their views and claims. This is because the institution behind the statutory law, i.e. the state and its representatives, is more powerful than the collectivity behind customary law, namely individual villagers.

Along with flaws in the statutory law, which could arguably be overcome, the case study also detected weaknesses in the implementation of legal procedure. These are related to:

- The difficulty of identifying local land orders in complex land tenure regimes; this is because of the specific nature of customary regimes based on individual arrangements, but also because of insufficient dedication by government officials and village governments to identify such rights. This was also shown in other cases.<sup>56</sup> Village land use planning, as foreseen by the more recent Land Use Planning Act of 2007 would be helpful in this regard. In a participatory process, each village is supposed to develop its own plan which should include an analysis of the current use and the future community needs.<sup>57</sup> Yet implementation is a challenging task in itself and in mid-2010, only about 10 per cent of all Tanzanian villages had a village land use plan.<sup>58</sup>

- Unequal social relations between government authorities and villagers and between members of VC, other villagers and non-village members; they lead not only to statutory law being stronger than customary law when there are doubts, but also to VA decisions being influenced or pre-decided. Hence there is a risk that powerful village members will take decisions that elide interests of weaker villagers and non-village members. Other studies also report the strong influence of government authorities on land deals.<sup>59</sup>
- Unequal knowledge about land rights of local people compared to representatives of the district and the investor; though local people respect statutory law, they have little knowledge of it.<sup>60</sup> Thus, when there are mistakes during the land transfer process, it is difficult for affected local people to defend their rights. Obviously, these knowledge inequalities cannot be balanced out during the process, although state regulations contain certain provisions. Considering the complexity of land law and the relatively low level of formal education overall, it is not surprising that the information shared at a few public meetings is insufficient for the majority to fully understand the legal process.

All of the flaws in law and in its implementation may have adverse implications for the affected villagers, such as major delays in compensation payments and the hardship this causes.<sup>61</sup> In the most extreme cases, as this study illustrates, this may include people losing their land against their will and even having to relocate their households due to a shortage of land in the area. Finally, the challenges of a land transfer process may affect not only local landholders and land users, but may also have negative consequences for the government officials involved and for the investor in terms of increased costs, time and workload.

Overall, the example from Tanzania shows us that even statutory land law that supposedly offers relatively good protection for customary rights does not do so in a foolproof manner. For investors, relying on the procedural steps as defined in law and on the respective village representatives is no guarantee of a conflict-free land transaction. This is because of weaknesses in the law, but more importantly because several errors can occur at different levels during implementation. The claim that transnational land deals can be disciplined by improved regulations is therefore questionable.<sup>62</sup> Some of the flaws in implementation are related to unequal social relations between actors who back different laws. Less knowledgeable people and people living in complex land tenure settlements – arguably a significant share of the population of the Global South – are particularly at risk.

If foreign investors are to continue acquiring land in Tanzania and elsewhere – though this study does not advise this – then the following points are recommended. Strengthening local people's and village governments' knowledge of land rights under statutory law in advance could considerably improve a land deal process. It is also important to carry out a more detailed analysis of the local property regime – as stipulated in the more recently enacted law on participatory village land use planning. In this context, it would also be advisable to promote the recognition of legal pluralism and customary law among investors. Furthermore, some adjustments should be considered to the Tanzanian laws regarding decision-making about land transfers and potential 'collateral forced resettlements'.

In sum, my analysis raises severe doubts as to whether large transnational land deals can be conducted in a way that fully respects existing land rights. The findings of this study support voices that call for alternative pathways of agrarian development that do not affect people's land rights.



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## Notes

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- <sup>1</sup> Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property.”
- <sup>2</sup> Zoomers, “Globalisation and the Foreignisation of Space”; Deininger and Byerlee, *Rising Global Interest in Farmland*; Cotula, “International Political Economy”; Borras Jr and Franco, “Trajectories of Agrarian Change.”
- <sup>3</sup> Cotula et al., *Land Grab or Development Opportunity?*; De Schutter, “How Not to Think of Land-Grabbing”; Li, “Centering Labor in the Land Grab Debate.”
- <sup>4</sup> Deininger and Byerlee, *Rising Global Interest in Farmland*; von Braun and Meinzen-Dick, “*Land Grabbing*” *Risks and Opportunities*.
- <sup>5</sup> Deininger and Byerlee, *Rising Global Interest in Farmland*, 89.
- <sup>6</sup> For example Bengesi et al., *Implication of Biofuels Production on Food Security in Tanzania*; Mwamila et al., *Feasibility of Large-Scale Bio-Fuel Production in Tanzania*; Mngazija, “Tanzania Needs Biofuel Policy before It’s Too Late”; Kamanga, *The Agrofuel Industry in Tanzania*.
- <sup>7</sup> Locher and Sulle, *Foreign Land Deals in Tanzania*.
- <sup>8</sup> LARRRI, *Accumulation by Land Dispossession*.
- <sup>9</sup> Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 14.
- <sup>10</sup> Meinzen-Dick and Pradhan, “Implications of Legal Pluralism” 11; Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 17.
- <sup>11</sup> Ibid., 15, 20.
- <sup>12</sup> Ibid., 15f.
- <sup>13</sup> Meinzen-Dick and Pradhan, “Implications of Legal Pluralism” 11.
- <sup>14</sup> Benda-Beckmann, Benda-Beckmann, and Wiber, “The Properties of Property,” 19.
- <sup>15</sup> Griffiths, “Pursuing Legal Pluralism” 175.
- <sup>16</sup> Meinzen-Dick and Pradhan, “Implications of Legal Pluralism” 11.
- <sup>17</sup> Ibid.
- <sup>18</sup> Shivji, *Not yet Democracy*, 2f, 12; Isaksson and Sigte, “Allocation of Tanzanian Village Land,” 16; Abdallah et al., “Large-Scale Land Acquisitions in Tanzania” 37, 43; Ojalammi, *Contested Lands*.
- <sup>19</sup> URT, *Land Act (No. 4)*; URT, *Village Land Act (No. 5)*; Alden Wily, *Community-Based Land Tenure Management*, 15.
- <sup>20</sup> URT, *Land Act (No. 4)*, sec. 4(a); Alden Wily, *Community-Based Land Tenure Management*, 1999.
- <sup>21</sup> See URT, *The Land Use Planning Act 2007*, sec. 2.
- <sup>22</sup> URT, *Land Act (No. 4)*, sec. 7.

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- <sup>23</sup> URT, *Village Land Act (No. 5)*, sec. 8(1), 12(1).
- <sup>24</sup> Ibid., sec. 3; Alden Wily, *Community-Based Land Tenure Management*, 18.
- <sup>25</sup> One of the law's aims is to increase security by providing the opportunity to register customary rights locally. Landholders can obtain a Certificate of Customary Right of Occupancy (CCRO) from the VC, URT, *Village Land Act (No. 5)*, sec. 29. CCROs are not dealt with here in more detail, as they were not used and not known by local people in the case study area.
- <sup>26</sup> Benda-Beckmann, Benda-Beckmann, and Wiber, "The Properties of Property," 19; see also Knight, *Statutory Recognition of Customary Land Rights*, x.
- <sup>27</sup> Vermeulen and Cotula, "Over the Heads of Local People," 909; German, Schoneveld, and Mwangi, "Contemporary Processes of Large-Scale Land Acquisition," 11; Wily, "'The Law Is to Blame'," 747.
- <sup>28</sup> URT, *Land Act (No. 4)*, sec. 19(2).
- <sup>29</sup> Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods*; Abdallah et al., "Large-Scale Land Acquisitions in Tanzania," sec. 40, 42.
- <sup>30</sup> The Tanzania Investment Centre is a government agency that promotes and facilitates investment in the country with the aim of increasing national economic growth, URT, *The Tanzania Investment Act, 1997*, sec. 5.
- <sup>31</sup> URT, *Village Land Act (No. 5)*, sec. 4.
- <sup>32</sup> In the law, it says 'The Commissioner or an authorized officer...', URT, *Village Land Act (No. 5)*, sec. 4.(7). The Commissioner for Lands is a government official appointed by the President, responsible to the Minister for the administration of the Land Act, URT, *Land Act (No. 4)*, sec. 9(1), 10(1). In practice, authorised district land officers usually represent the Commissioner in their district.
- <sup>33</sup> The Village Land Act states that the President can transfer Village Land to General Land or Reserved Land for 'public interest', whereas public interest includes 'investments of national interest', which are not further described in the law, URT, *Village Land Act (No. 5)*, sec. 4(1, 2). However, in the context of foreign investment in agrarian land, it seems that the President does not usually transfer land against a village assembly's recommendation, see also Isaksson and Sigte, "Allocation of Tanzanian Village Land," 25; German, Schoneveld, and Mwangi, "Contemporary Processes of Large-Scale Land Acquisition," 7.
- <sup>34</sup> URT, *Village Land Act (No. 5)*, sec. 4(8), 4(11); URT, *Village Land Regulations*, sec. 9–19.
- <sup>35</sup> NFC, "The New Forests Company."
- <sup>36</sup> Ibid.; see also Locher and Müller-Böker, "'Investors Are Good, If They Follow the Rules'."

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<sup>37</sup> LARRRI, *Accumulation by Land Dispossession*, 29.

<sup>38</sup> Witamasiva in Wahehe language means ‘pour out milk’. According to an interviewee, this is based on the story of a farmer who reportedly lived in this fertile area in earlier times and had so many cattle that he did not know what to do with the excess milk other than pouring it away.

<sup>39</sup> Ibid., 29f.

<sup>40</sup> Ibid., 30.

<sup>41</sup> URT, *Notice of Intension to Transfer Village Land*.

<sup>42</sup> URT, *Village Land Act (No. 5)*, sec. 4(3).

<sup>43</sup> LARRRI, *Accumulation by Land Dispossession*, 32.

<sup>44</sup> Ibid., 31.

<sup>45</sup> Obviously, the legal provision that land – whether used or unused – should be compensated based on market value was not followed. Compensation is an important issue, which also led to major conflicts in other villages where NFC has acquired land, Locher and Müller-Böker, “‘Investors Are Good, If They Follow the Rules’,” 253. However, the appropriateness of compensation is not the main focus of this article and is thus not treated in full detail here. See Massay, “Compensating Landholders in Tanzania.” and Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods* for further analysis of related issues in Tanzania.

<sup>46</sup> URT, *Village Land Regulations*, sec. 63.

<sup>47</sup> Interview with district official 2011. An additional area of around 721 hectares, which is part of the same plot, belongs to two other neighbouring villages, namely Magome and Ndengisivile.

<sup>48</sup> LARRRI, *Accumulation by Land Dispossession*, 32.

<sup>49</sup> URT, *Notice of Transfer of Village Land*.

<sup>50</sup> LARRRI, *Accumulation by Land Dispossession*, 41; own interview data.

<sup>51</sup> The land rights consist of land holding and land use rights and also affect a number of people in the two neighbouring villages mentioned in footnote 47.

<sup>52</sup> Meinzen-Dick and Pradhan, “Implications of Legal Pluralism” 11.

<sup>53</sup> LARRRI, *Accumulation by Land Dispossession*, 29.

<sup>54</sup> In the case study I presented, it is obvious that the VC members did not support the villagers and their customary rights in the most effective way throughout the transfer process. This was not only due to lack of knowledge about specific local arrangements, but it also occurred in other contexts (further elaborated in section 5.2). The reasons for these flaws on the part of the village government cannot be revealed in this study, but they could be

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linked to lacking knowledge and being overwhelmed, to a disregard of certain customary arrangements, to concerns about losing the investor's interest and the promised benefits or – as suspected by LARRRI, *Accumulation by Land Dispossession*, 36 – stem from a fear of a backlash from more senior government officials who support the investor.

<sup>55</sup> URT, *Village Land Act (No. 5)*, sec. 4(8).

<sup>56</sup> Locher, Steimann, and Raj Upreti, "Investment Principles and Plural Legal Orders"; Abdallah et al., "Large-Scale Land Acquisitions in Tanzania."

<sup>57</sup> URT, *The Land Use Planning Act 2007*, sec. 27(1), 22(3).

<sup>58</sup> Interview with official of the National Land Use Planning Commission 2010; Isaksson and Sigte, "Allocation of Tanzanian Village Land," 31; Abdallah et al., "Large-Scale Land Acquisitions in Tanzania," 42. Since 2007, a village land use plan has reportedly been a requirement for transferring land to an investor. However, this requirement appears not to be spelled out in law, but in a Presidential Order from 2007. Several national and district officials I interviewed referred to this requirement, but – like Isaksson and Sigte, "Allocation of Tanzanian Village Land," 31. – I could not get hold of this Presidential Order nor of any other legal basis for this specific requirement (except of Tanzania's Biofuels Guidelines, see URT, *Guidelines for Sustainable Liquid Biofuels*). As the land deal analysed here started already in 2006, I assume that the legal requirement for a village land use plan is not valid in this case.

<sup>59</sup> E.g. Isaksson and Sigte, "Allocation of Tanzanian Village Land," 30; Vermeulen and Cotula, "Over the Heads of Local People"; Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods*.

<sup>60</sup> See also Sulle and Nelson, *Biofuels, Land Access and Rural Livelihoods*.

<sup>61</sup> See also Cotula et al., *Land Grab or Development Opportunity?*; Massay, "Compensating Landholders in Tanzania."

<sup>62</sup> See also Locher, Steimann, and Raj Upreti, "Investment Principles and Plural Legal Orders"; German, Schoneveld, and Mwangi, "Contemporary Processes of Large-Scale Land Acquisition."

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## Paper III

Locher M., Steimann, B., Bishnu, R. U. 2012

**Land grabbing, investment principles and plural legal orders of land use**

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## ABSTRACT

### **Land grabbing, investment principles and plural legal orders of land use**

Martina Locher, Bernd Steimann and Bishnu Raj Upreti

Recently, foreign direct investment in land, also termed 'land grabbing', has increased significantly in developing countries. In response to growing concerns about its detrimental impacts, the UN Food and Agriculture Organization (FAO), the World Bank and other multilateral organizations have come forward with two proposals, namely the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO 2012, FAO guidelines), to protect people's rights, and the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (FAO et al. 2010, RAI principles), to make such investments more responsible. One of their central tenets is that investors and host governments respect local people's existing property rights over land by formalising them in a transparent and participatory manner.

The article challenges the two proposals – and thus much of the recent land grab debate – from a legal pluralism perspective, by showing that they do not adequately consider the existence of plural legal orders over land and the dynamics of power and everyday practices inherent in property relations. Referring to empirical evidence from Tanzania, Nepal, and Kyrgyzstan, we raise three fundamental concerns about the formalization of property rights. First, we demonstrate that the recognition of customary rights is a very complex and delicate endeavour, which risks neglecting existing property claims and rights. Neither of the proposals addresses this in a satisfactory way. Second, we understand that formalization by state intervention is sometimes necessary, but in those circumstances we cannot recommend the centralist approach of formalizing property rights, as proposed in the RAI principles. In many contexts, this approach has resulted in adverse effects for local communities rather than strengthening their rights. Third, a more rights-based vision as brought forward by the FAO guidelines still bears the risk of reinforcing unequal local power structures. Yet, this vision leaves it to local communities to decide whether their land should become a marketable good to outsiders or not. However, the introduction of such a property regime requires fundamental changes

in governance. This cannot be addressed adequately within the framework of guidelines alone. Instead, more long-term strategies for the protection of customary rights are required. Thus, from an analytical perspective, a moratorium on 'land grabs' would be most appropriate. From a more pragmatic perspective though, we acknowledge the FAO guidelines and – to a much lesser extent – the RAI principles as more immediate efforts to reduce negative effects of 'land grabs'. However, investors and host governments should not mistake these guidelines as guarantors of ostensibly harmless land acquisitions. Finally, this article concludes that employing a legal pluralism perspective is very helpful in gaining a more holistic understanding of potential effects and proposed measures in the context of 'land grabs'.

# LAND GRABBING, INVESTMENT PRINCIPLES AND PLURAL LEGAL ORDERS OF LAND USE<sup>1</sup>

Martina Locher, Bernd Steimann and Bishnu Raj Upreti

## Introduction

In recent years, foreign direct investment in land has increased significantly in developing countries. Land acquisition in a developing context by foreign investors is often referred to as 'land grabbing'. In response to the growing concerns about the effects of land grabbing, various multilateral organizations including the UN Food and Agriculture Organization (FAO) and the World Bank have recently come forward with guidelines and principles to make such investments more responsible and transparent. One of the central tenets in the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (FAO 2012, in short 'FAO guidelines') and the *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (FAO et al. 2010, in short 'RAI principles') is that investors and involved host governments recognize and respect local people's existing property rights over land and other natural resources. To this end, it is suggested that prior to any large-scale land deals, existing property rights should be formalized in a transparent and participatory manner. Thus, the two proposals build on the assumptions that all kinds of property rights over land can be formalized, and that such formalization is required in order to support the interests of local stakeholders.

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<sup>1</sup> This article is partially based on work conducted within the framework of the 'Special Research Project: Transnational Pressure on Land' of the Swiss National Centre of Competence in Research North-South (NCCR North-South): Research Partnerships for Mitigating Syndromes of Global Change. We would like to thank Norman Backhaus, Thomas Breu, Boniface Kiteme, Peter Messerli and Oliver Schönweger from the 'Malindi team', Craig Hatcher and the anonymous reviewers for their contributions and constructive feedbacks on the paper.



In this article we want to critically examine and challenge these assumptions from a legal pluralism perspective. Referring to the four layers of social organization brought forward by F. and K. von Benda-Beckmann (1999; see also F. von Benda-Beckmann et al. 2006), we first show that the proposed guidelines and principles – and thus much of the recent land grab debate – do not adequately account for the existence of plural legal orders over land and other natural resources, and that they largely ignore the dynamics of power and everyday practices inherent to property relations. Based on this, we raise three fundamental concerns about the idea of formalizing property rights in a legal pluralism context, and discuss them in the light of empirical evidence of competing claims over land resources from Tanzania, Nepal, and Kyrgyzstan.

The article demonstrates that the identification and recognition of customary group or individual rights is a very complex and delicate endeavour, which entails the risk of neglecting existing claims and rights of local people (this is our first concern). Neither of the proposals addresses this in a satisfactory way. Nevertheless, there are cases where formalization by state intervention is necessary, namely when local individuals and communities<sup>2</sup> are at risk of losing their rights against their will, or if it is their own wish to enter deals with outsiders. In such cases, from a legal pluralism perspective, a centralist approach to formalizing customary land rights as proposed in the RAI principles cannot be recommended. In many contexts, it has resulted in adverse effects for local communities rather than strengthening their rights (our second concern). A more "security and rights-based vision" (Assies 2009: 586) as brought forward by the FAO guidelines still bears the risk of reinforcing unequal power structures within local communities (our third concern). Yet, we argue, this approach is more promising in terms of leaving it to local communities to decide whether their land and natural resources should become a marketable good to outsiders or not. However, the introduction of such a property regime requires broad

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<sup>2</sup> We use the term 'local community' interchangeably with 'local people' or 'local stakeholders'. However, we are aware that local communities are by no means homogenous and do not necessarily experience the same consequences when 'land grabs' take place. In this article, we only distinguish between local elites and 'common' members of local communities. Other important characteristics in the context of 'land grabbing' include gender (see Behrman et al. 2011) and indigeneity (Sawyer and Gomez 2008). For critical thoughts on the notion of 'community' related to natural resource management and land reforms, see Sikor and Müller (2009: 1310f).

changes in governance. This cannot be addressed satisfactorily within the framework of investment guidelines. Instead, more long-term strategies on how to protect customary rights are required.

*Foreign direct investments in land and current proposals for a 'Code of Conduct'*

In recent years, foreign direct investments in land have become a key factor of rural transformation in the Global South. Based on a new database it is estimated that between 2000 and April 2012, foreign land purchases and leases amounted to more than 80 million hectares (Anseeuw et al. 2012: 3). Deininger refers to 57.8 million hectares of intended or actual land deals in the year 2009 alone (Deininger 2011: 220). So far, most of these deals have taken place in Sub-Saharan Africa, yet large agricultural land reserves are also at stake in post-Soviet Eurasia, Latin America and Asia (Visser and Spoor 2011; Borras and Franco 2010; World Bank 2010; GRAIN 2008). Foreign investors often belong to either emerging and highly dynamic economies such as those of China or the Gulf states, or to developed economies from Europe and the US. The actual transaction of farmland usually happens in close collaboration with respective national governments in the host countries (Deininger 2011: 224; Borras and Franco 2010; GRAIN 2009). Some of the key drivers behind these investments are an increasing demand for food and non-food agro-products, such as biofuels, due to an ever-growing world population, changing nutrition patterns, and climate change and energy supply concerns. As a consequence, and in addition, land itself is also increasingly viewed as a central commodity and an object of speculation (Gonzalez 2010; Zoomers 2010; Cotula et al. 2009).

Along with the increasing pace and extent of these investments or 'land grabs', a growing number of observers started to raise concerns about their environmental, economic and socio-political consequences. The main points of critique pertain to the detrimental effects of large-scale plantations if compared to smallholder agriculture. These include impacts on natural resources such as water, soils, and biodiversity, but also on the livelihoods of the affected population, e.g. through reduced food security or income opportunities (de Schutter 2011; Cotula et al. 2009). Considerable attention has also been paid to the consequences of such investments for local people's property rights over land and other natural resources, and thus their capacity for self-determination (Borras and Franco 2010). In recent years, civil society organizations have documented numerous cases where local people's property rights were ignored and violated by investors and involved government agencies alike, sometimes even leading to forced displacements (see e.g. GRAIN 2009). Also the World Bank (2010) has reported such cases. In

addition, recent analyses suggest that a weak general recognition of land rights at country level correlates with high levels of foreign demand for that land (Alden Wily 2011; Deininger 2011: 218; Visser and Spoor 2011: 319f; Mann and Smaller 2010).

While certain sectors such as the extractive industry have taken up these concerns by agreeing on (voluntary) principles for responsible investment, no global consensus has been reached yet in terms of land- and water-intensive agro-investments. However, at the international level, two prominent proposals for such a Code of Conduct have been released, which have been subject to a more or less broad consultation process among multilateral organizations, national governments, and civil society organizations.

A first initiative was taken by the FAO, which brought forward the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (FAO 2012). They build on the final declaration of the 2006 International Conference on Agrarian Reform and Rural Development, which emphasized the importance of secure and sustainable access to land, water and other natural resources, as well as of economic, social and cultural rights of marginalized and vulnerable groups in terms of land and natural resource issues (FAO 2006). To carry the dialogue further, the FAO initiated a broad, participatory process to develop practice-oriented, voluntary guidelines on the responsible governance of natural resource tenure. More than 90 FAO member countries, several UN agencies and other international organizations, farmer associations, representatives from the private sector as well as civil society organizations (CSOs) participated in the process, which consisted of three rounds of negotiations facilitated by a working group of the Committee on World Food Security (CFS). The active involvement of CSOs seems particularly noteworthy; not only did they participate in the official negotiations, but they additionally held a series of regional civil society consultations, which were facilitated by the International Planning Committee for Food Sovereignty (IPC). Thus, the FAO's consultation process developed into a highly contentious debate, but in return was positively acknowledged by a broad range of stakeholders. In their final version endorsed by the CFS on May 11, 2012, the guidelines mainly address potential host states rather than investors. Consequently, they refer explicitly to existing binding international law such as the universal declaration on human rights or international conventions on indigenous people or biodiversity. This is also why they gained the support of several important international agrarian movements such as La Via Campesina, the IPC, and others (Borras et al. 2011).

In a second initiative, the World Bank Group, the FAO, the International Fund for

Agricultural Development (IFAD), and the United Nations Conference on Trade and Development (UNCTAD) joined to propose *Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources* (FAO et al. 2010). Being the result of negotiations among officials of the involved organizations rather than of a broad consultation process, these so-called 'RAI principles' have been promoted since early 2010, most prominently in the World Bank's report on land-related investments (World Bank 2010). Their intention is to provide guidance for host countries and investors on how to prepare strong domestic legislation and carry out socially responsible investments respectively (FIAN 2010a). They consist of seven key principles addressing the issues of property rights, food security, transparency, participation, economic viability, as well as social and environmental sustainability. However, unlike the FAO guidelines, and despite a consultation process initiated in early 2010, some of the governments most directly concerned as well as civil society organizations have repeatedly denounced the RAI initiative for a striking lack of consultation in its early stages. In addition, it has been criticized for its reliance on the mainstream tools of 'good governance' and on corporate social responsibility frameworks rather than on binding human rights obligations. So far, it has also remained unclear as to how the RAI principles will be linked to the FAO guidelines (de Schutter 2011; Li 2011; FIAN 2010a).

### The Notion of 'Property Rights' in the FAO Guidelines and the RAI Principles from a Legal Pluralism Perspective

Proponents of large-scale investments in land have often argued that they invest in 'unused land', 'reserve agricultural land' or 'idle land' only, i.e. land which was not used for any form of production and for which no local claims existed whatsoever (World Bank 2010; Woertz et al. 2008). Critics have remarked, however, that much of this seemingly 'unused land', which is usually in the formal ownership of the state, is subject to long-standing, often vague and informal tenure rights of the local population, be it individuals or groups, and that the neglect of such rights may trigger conflict and undermine effective land use and management (Cotula et al. 2009; Haralambous et al. 2009). Both the FAO guidelines and the RAI principles have taken up this concern. In principle, both proposals demand that governments and investors recognize and respect existing property rights to land and associated natural resources, namely by demarcating and formalizing these rights prior to any investment-related land transfer. For the detailed formulations in both proposals regarding the notion of property rights see Table 1.

Table 1: Selected main elements of the FAO guidelines and the RAI principles

	<i>FAO guidelines:</i> Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012)	<i>RAI principles:</i> Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (FAO et al. 2010)
<i>Main demands</i>	"Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation..." (16).	"Existing use and ownership rights to land, whether statutory or customary, primary or secondary, formal or informal, group or individual, should be respected." (First of the seven RAI principles: 2)
<i>Procedure</i>	"States should allocate tenure rights and delegate tenure governance in transparent, participatory ways, using simple procedures that are clear, accessible and understandable to all, especially to indigenous peoples and other communities with customary tenure systems" (13).	Investors and government agencies must identify all right holders and legally recognize, demarcate and register their existing rights and uses. This is followed by "negotiation with land holders/users, based on informed and free choice" (2).  Demarcation should be done "in a participatory and low-cost way that can be implemented quickly" (4).

<i>Objective, expected outcome</i>	<p>States should "protect tenure right holders against the arbitrary loss of their tenure rights" and "[p]romote and facilitate the enjoyment of legitimate tenure rights" (3).</p> <p>Ultimately "These Voluntary Guidelines seek to improve governance of tenure of land [...] with the goals of food security [...], poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development" (1).</p>	<p>Recognition of land rights "can greatly empower local communities and such recognition should be viewed as a precondition for direct negotiation with investors" (2).</p> <p>Ultimately, the objective is to avoid "[l]oss of land and other resource rights to an investment project without recognition of quite valid sensitivities and without full compensation" and "...the disruption of livelihoods and the dislocation of communities" (3). Further, another objective seems to be to prevent "public criticism of large-scale investment" due to such neglects (3).</p>
<i>Other comments</i>	<p>"States should, in drafting tenure policies and laws, take into account the social, cultural, spiritual, economic and environmental values of land, fisheries and forests held under tenure systems of indigenous peoples and other communities with customary tenure systems" (15).</p> <p>Recognizing other than central state practices: "States should respect and promote customary approaches used by indigenous peoples and other communities with customary tenure systems to resolving tenure conflicts within communities..." (15).</p>	<p>Acknowledging that the formal recognition of group rights may be difficult and may foster individualisation of former common property (3).</p>

### *Challenging the two proposals from a legal pluralism perspective*

Since the consultation processes began in 2010, much criticism has been raised against the two proposals, not least regarding their approach to property rights. Many observers consider it naive to believe that legal recognition of land rights can guarantee their protection from 'unfriendly takeovers'. It has also been remarked that the simplistic focus on 'existing land rights' disregards the resource needs of future generations, thus underestimating new local claims that may arise in future (Borras and Franco 2012: 54, 2010: 517; de Schutter 2011; Li 2011; FIAN 2010a: 3; Scoones 2010).

In addition to these legitimate points of critique, a closer look at the two proposals from a legal pluralism perspective raises a number of further caveats and concerns. These mainly pertain to their somewhat simplistic notion of 'property rights' and the measures proposed to strengthen and protect them. We have chosen the legal pluralism perspective, because we consider it particularly useful for analysing the complexity of land tenure in contexts where different understandings of property converge.<sup>3</sup> First of all, legal pluralism accounts for the co-existence of parallel legal systems or institutions (F. and K. von Benda-Beckmann 1999). This is in contrast to a legal centralist perspective, where "law is and should be the law of the state, (...) exclusive of all other law, and administered by a single set of state institutions" (J. Griffiths 1986: 3). The debate on whether and how non-statutory legal systems should be formalized (e.g. Fitzpatrick 2005; Meinen-Dick and Mwangi 2008; Assies 2009) will be taken up towards the end of this article. Second, from a legal pluralism perspective, engaging with property means to acknowledge that it encompasses more than (private or common) ownership of a resource (Wiber 1992: 470). Instead, property rights are better understood as bundles of rights (or "web of

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<sup>3</sup> Borras and Franco claim that it would be more appropriate to focus on "rural poor people's effective control" – in Ribot's and Peluso's words 'access' – instead of property, and thus on the question of which people have "the ability to benefit from things" – in this case land – by drawing on different "bundles of powers" (Borras and Franco 2012: 55, following Ribot and Peluso 2003: 153, 154). While we agree with this view to some extent, we also see some challenges related to the use of this concept in this context (particularly in cases where people have rights to land, but too little power and thus no ability to use it). We have chosen the perspective of legal pluralism, as we consider this framework with its broad definition of property as useful for analytical purposes in relation to the FAO guidelines and particularly the RAI principles, which focus on land (tenure) rights (not land access).

interests", see Meinzen-Dick and Mwangi 2008), since different individuals or groups can have different rights over the same resource at the same time. The different types of rights can be broadly grouped into two categories, i.e. *use rights* (the rights to access and use or withdraw a resource) and *control rights* (the rights to manage a resource, to exclude others from using it, or to alienate it to others through sale, rental, or gift) (Benda-Beckmann et al. 2006; Meinzen-Dick and Pradhan 2001; J. Griffiths 1986; see Ostrom 2003 for a detailed categorization of different property rights). Third, legal pluralism means to acknowledge that property is not just a specific right or relation, but "concerns the ways in which the relations between society's members with respect to valuables are given form and significance" (Benda-Beckmann et al. 2006: 14; see also Sikor and Müller 2009: 1311; Meinzen-Dick and Mwangi 2008: 36). Consequently, property is always seen as embedded in a specific social and political context, encompassing a wide variety of different arrangements at different levels. These can include more formal aspects such as written rules, less formal ones such as people's beliefs and values, but also concrete practices related to property (Mehta et al. 2001; Wiber 1992; A. Griffiths 1998). The work of Benda-Beckmann et al. (2006), who distinguish four 'layers of social organization', helps to analytically grasp this plurality behind property relations. The first layer includes *ideologies and culture*, where neoliberal concepts of private property may collide with traditional or religious concepts of common property. The second layer focuses on *legal regulations*, which are usually directly related to ideologies and culture, but are more specific in the sense that they define concrete rules and procedures. This includes state law, but also customary or religious law. The third layer refers to people's actual *social relations related to property*. These are often multifunctional and reflect local power relations shaped by community and kin or by social, political or economic dependencies (e.g. patron-client relations), rather than abstract norms defined by state, customary or religious law. Thus, disputes over land tenure can only be understood within a wider socio-political context (Lund 1998). The fourth layer emphasizes that it is in people's concrete, everyday *property practices* (e.g. fencing or paying land rent) where ideologies, laws, and social relationships regarding property are reflected, negotiated, reproduced, and eventually transformed. In this context, we consider 'forum shopping' (Meinzen-Dick 2009: 3; Meinzen-Dick and Pradhan 2001: 11; cf. K. von Benda-Beckmann 1981) a useful concept<sup>4</sup>. It describes the practice of certain

<sup>4</sup> When introducing the concept termed 'forum shopping' in her work in 1981, K. von Benda-Beckmann described it as the practice of certain stakeholders appealing to different institutions (i.e. forums) representing different legal systems in order to solve conflicts in their favour. In this article, we use the concept in a broader sense for the practice of using different norms and regulations to support claims over resources, without necessarily appealing to conflict resolution forums. While a



stakeholders manoeuvring between different norms and regulations to secure their claims over resources. Consequently, property rights and the ways in which resources are used do not simply derive from statutes or formal rules, but "should be understood as negotiated outcomes" (Meinzen-Dick 2009: 3).

To some extent, the examined guidelines and principles account for these aspects of legal pluralism in property rights. The FAO guidelines state explicitly that resources have not only an economic and a political value, but that they can also have social, cultural, and spiritual values (see Table 1 above). In this way, they refer at least indirectly to the layer of ideas and ideologies related to resource property. The RAI principles distinguish not only between use and ownership rights, but refer explicitly also to statutory and customary, primary and secondary, formal and informal, as well as group and individual forms of property (see Table 1). They thus acknowledge that property rights over resources can take multiple forms and that there may be other layers of legal regulation besides statutory law. Nevertheless, both documents still build on a rather static understanding of property, since they largely ignore the dynamics of concrete social relationships and property practices. Neither the FAO guidelines nor the RAI principles acknowledge that property regimes may be contested, that they may be subject to ambiguous rules, and that especially powerful rights holders may draw on different legal systems to legitimize their property claims. In short, the social embeddedness of property and related aspects of power are largely absent from these documents. This is particularly problematic because both proposals seem to assume that property rights over land and other natural resources can and should be formalized, and that such formalization necessarily supports the interests of all local stakeholders.

In the following, we raise three fundamental concerns from a legal pluralism perspective, focusing on the identification of plural legal arrangements (our first concern) and the process as well as potential consequences of the proposed formalization (our second and third concerns). We will discuss our concerns in light of empirical evidence from three different regional contexts, i.e. Kyrgyzstan, Tanzania, and Nepal. Only part of this evidence (i.e. the evidence from Tanzania) stems from explicit empirical research on what is now called 'land grab'. We

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cognate term such as 'shopping for normative orders' or 'shopping for legal systems' would be more precise for this broader concept, we use 'forum shopping' by referring to Meinzen-Dick who describes it as a process in which "individuals and groups make use of one or another of these legal frameworks as the basis for their claims on a resource" (Meinzen-Dick 2009: 3; see also Meinzen-Dick and Pradhan 2001: 11).

intentionally use material from other contexts in which existing patterns of land rights have changed and resource claims of various actors compete with each other. We are convinced that much can be learnt about the complexity of dealing with multiple socio-legal arrangements in land issues and the potentials and pitfalls of formalization procedures also from other (and earlier) cases, as has been argued and demonstrated also by Hall (2011) and Li (2011: 285f).

### First Concern: Non-Statutory Legal Orders of Land Use are Difficult to Identify

Our first concern is that the formalization of property rights is a very delicate endeavour. Formalization as a first step requires the identification of claims (Meinzen-Dick and Mwangi 2008: 38). Claims are based on legal orders, and these are expressed in ideas and ideologies, concrete social relationships, and property practices, particularly where property rights are not (only) defined through statutory law. Elements in these layers of social organization are often difficult to identify and recognize, as we will show in the following two examples.

#### *Tanzania: Challenges in identifying customary property rights*

The example of a UK-based forestry company acquiring land in Tanzania illustrates challenges for outsiders to identify customary property rights during the land acquisition process (Locher 2011). In this case, a village assembly in the Southern Highlands had decided to hand over a certain area of reserve village land to the investor (Chachage and Baha 2010). The land is far from the core settlement and at present not used by the villagers. It is known under a specific name given by local people who had been living there before they were resettled by the socialist government during the 1970s. The decision was recorded in the meeting minutes accordingly, and a committee was formed to show the area to the district officials so that they would demarcate it for the land transfer. However, as Locher (2011) illustrates, the committee was headed by the village chairman who did not originate from that particular area. Since he did not know the exact boundaries of the respective area, he only showed it roughly to the district officials by pointing at it from afar. Hence, a considerably bigger area than what the village assembly had agreed upon was transferred, and several parcels, which according to customary law belonged to local households, were transferred, too. Further, some of those parcels were used by households from a neighbouring village, who had been provided use rights by the landholders. Unfortunately, the concerned households only realized

that their land was transferred to the investor once the deal was made. They had to struggle for more than a year until their claims became formally accepted. They did not succeed, however, to revoke the transfer and finally felt forced to agree on the offered compensation. The example shows that detailed knowledge about complex customary property rights is not shared by everyone in a village, not even necessarily by elected village representatives. This lack of specific knowledge is likely to be more pronounced in respect of secondary property rights. In such cases, sometimes only those directly involved know their property arrangements and exact boundaries. Boundaries of individual property are not visibly marked, but are both conveyed verbally by referring to natural landmarks and reproduced through regular use such as planting crops. However, some land is not used intensively and there are also fallow periods. This makes it particularly difficult for outsiders to physically detect customary property rights in short visits.

#### *Nepal: Dispute over ownership of a land pooling Joint Venture Project*

In Nepal, particularly in the capital and big cities, real estate companies have emerged as key players in the housing sector market. They acquire fertile agricultural lands from farmers at cheap rates and sell high priced houses or house construction sites, thus earning huge profit margins (Shrestha 2011; Upreti et al. 2008; Upreti 2004b). In order to prevent such exploitation, the Bhaktapur Municipality together with the Kathmandu Valley Town Development Plan Executive Committee recently initiated a Joint Venture Project (JVP). In 2009, they accumulated approximately 30 ha of land from different landowners. The objective of this land pooling JVP was to improve the housing standards in the residential areas by providing basic requirements such as open spaces, food paths, drinking water, electricity, waste collection points, children's play areas. Once the land was endowed with all these facilities, the JVP intended to sell it for fixed prices, whereas the former landowners were provided right of pre-emption. However, the land soon became a major source of contestation among the involved stakeholders. While the JVP claimed full control rights (including access, withdrawal, management, exclusion and alienation rights; see Ostrom 2003; Schlager and Ostrom 1992), the original land contributors argued that the JVP had no exclusive alienation rights, even if the project was exercising other control rights. In addition, many landowners, farmers, bureaucrats and politicians, who had not directly contributed their land to the JVP, have started to object to the JVP work by claiming different rights such as their freedom to use the surrounding open spaces for cultural, religious and social activities, which was altered after the land was taken by the JVP. The affected people cite their historical association, cultural and religious

values, as well as their land use practices in order to oppose the provisions of the JVP.

### *Conclusions from the presented cases*

The two cases from different contexts illustrate that 'existing property rights' over land resources can only be understood if conceptualized as overlapping 'bundles of rights'. Local claims and rights often coexist and overlap in terms of scale and time, and build on a broad variety of normative and cognitive frameworks as well as resource-related practices of access and use. Tanzanian smallholders convey their right to use certain land parcels from long-standing social relations and regular use practices, and Nepali land users interpret the rights to the JVP land according to their own customary and religious frameworks. Thus, local claims and rights not only build on different legal regulations but are also superimposed and further adapted by individual social relations, beliefs and practices.

Consequently, local people's perceptions of 'legitimate' and 'illegitimate' property rights often differ and even conflict with each other. The example from Tanzania shows that elected representatives (who are usually among the first ones to be involved in a participatory planning process) are not necessarily aware of all the flexible and often-changing tenure arrangements. In both cases, these coexisting and competing claims have become publicly contested in the course of an external intervention, such as the appearance of an investor seeking to acquire arable land in Tanzania and the municipality authorities acquiring land for a housing improvement project in Nepal. Apparently, both interventions have failed to sufficiently account for existing claims and rights, even when they tried to do so in a participatory manner (as in Tanzania) or sought to make access to land resources more equal (as in Nepal). This raises the question, whether and how locally existing claims and rights can be 'recognized' in the course of a large-scale investment in land. The complex endeavour is even more delicate for investors that usually deal with formal authorities who often themselves do not know or recognize the plural legal arrangements at the local level.

In any case, trying to identify existing rights by adopting a 'quick' and 'simple' procedure (as suggested in the two proposals) seems not only unrealistic but also irresponsible, given the conflicts and displacements that this may cause. We will take up this thought again towards the end of this article.

## Second Concern: Centralist Approaches to Formalizing Property Rights Allow the State Administration to Expand its Influence at the Cost of Local Communities

Our second concern is that the formalization of hitherto non-formalized property rights allows superior levels of the state administration to expand their influence and increase their control over subordinate levels of the administration as well as over local communities and individual resource users. While this is not negative *per se*, under certain circumstances it can result in adverse political and financial pressure upon local communities and resource users. Thus, land titling may run counter to the declared intention of the FAO guidelines and the RAI principles to strengthen local communities and to ensure the effective use of scarce natural resources.

### *Nepal: Formalization and legalization of property rights as a means to expand state influence and control*

Until 1950, land rights in Nepal were shaped by various cultural, social and normative practices and plural legal arrangements such as state, folk, customary, indigenous, and religious law (Upreti 2004a). In 1951, Nepal started a land reform to formalize and legalize property rights, which has been a major agenda for six decades. In the course of the reform the state changed all existing forms of land ownership into the *Raikar* ownership system. *Raikar* denotes an ultimate state ownership over all land, which is then cultivated by individuals as direct tenants of the state. The reform thus did away with six existing different forms of land control rights (Pyakuryal and Upreti 2011; Alden Wily et al. 2009; Caplan 2000; Thapa 2000; Regmi 1999). Studies show that at the operational level such expansion of state control and influence created numerous complications and led to many local conflicts (Upreti 2010; Upreti et al. 2008). The government argued though, that it was necessary to merge all land tenure systems in the country into one form of ownership in order to reach the declared objectives of improving land management, increasing agricultural production and productivity, and ensuring access to land for the landless (Kshetry 2011; Shrestha 2011). However, the reform provided a conducive (and to some extent manipulative) framework for a close nexus between the bureaucracy of government land administration and powerful elites to reap the benefits of the reform (Pyakuryal and Upreti 2011; Alden Wily et al. 2009). Basnet documents that when the land reform was implemented through the Lands Act 1964, the poorest 65 percent of the total population held 15 percent of land as opposed to 3.7 percent of the population, the rich peasants and feudal lords, who held 39.7 percent of land (Basnet 2011: 143). After the reform, according to the UNDP

(2004), the 5 wealthiest percent of the people in Nepal own 37 percent of all arable land, whereas the poorest 47 percent own only 15 percent of all land. Though these figures show a gradual improvement over time they also demonstrate that the poor, marginalized and landless were not among the main beneficiaries of the most hyped land reform programme in Nepal. However, government officials not only gained control over land resources, but greatly expanded their influence over local communities. By using their authority, connection and influences, political and bureaucratic elites manipulated the provisions of the different land-related acts and regulations in order to exploit local people. This has also created problems in food production and security (Ghale 2011; Upreti et al. 2008), as it altered the existing agricultural practice, moving away from food production to non-agricultural commercial activities, and consequently food insecurity became more prevalent (Khatri and Upreti 2012).

*Kyrgyzstan: Private arable land as a liability for the less wealthy*

Agrarian reforms in Kyrgyzstan gained momentum in late 1993, when in view of the rapid impoverishment of the rural population, the central government declared the de-collectivization of former collective and state farms compulsory. Consequently, most of the hitherto state-owned arable land within these farms had to be equally distributed on an individual basis to all current and former farm employees and their family members. The land was first distributed in the form of land-use rights, which were converted into private ownership rights in 1998. However today, less wealthy households are often unable to cultivate all the land they received (Steimann 2011). They either lack the financial and technical means or the skills and knowledge required to do so. In addition, many irrigation schemes are in bad shape, and the allocation of water by local committees is often subject to arbitrariness and corruption (Lindberg 2007). At the same time, selling land is difficult because the concerned plots are usually far from the village and of bad quality; further, a nationwide moratorium on land sales was not lifted before 2001, this seriously slowed down the emergence of a functioning land market in rural Kyrgyzstan. Returning the land to the state is also not possible. As a consequence, a great deal of arable land has fallen out of production in recent years (Mamytova and Mambetalieva 2008). Nonetheless, irrespective of whether rural households use all their arable land or not, they are obliged to pay land taxes to the communal authorities. In addition, arable land serves as a basis for assessing a household's entitlement to state child allowances. This means that rural Kyrgyz households are taxed and assessed on the basis of land assets that many of them can neither use nor sell. In this way, private land ownership has turned into a liability for many among the less wealthy. At the same time, it has given the state an opportunity to exert

pressure upon the local population. For instance, communal authorities use the threat of tax increases as an effective means to get their way in the course of local conflicts (Steimann 2011: 182).

### *Conclusions from the presented cases*

The two examples may illustrate very different processes, yet they both show how legal centralist approaches, which define statutory law as the main or only normative framework (J. Griffiths 1986), inevitably lead to the expansion of power of the state administration. In many cases, this happens at the expense of local communities and resource users. Political elites in Nepal capitalize on the land reform by adjusting certain provisions of the new land acts and regulations to expand their influence and power at the local level. The Kyrgyz state endowed rural people with private property over land but not the means and structures required to effectively use it; since land is subject to taxes it has become a liability for many.

This raises considerable doubts as to whether a centralist approach can really do justice to legal plural orders over land property. It seems instead that the statutory recognition (or redefinition) of existing claims and rights strengthens the state administration rather than local communities. This confirms again that property is not just about questions of legal regulation and economic efficiency, but is always embedded in a concrete social and political context and is thus closely linked to issues of power and domination. In other words and with reference to the four layers of social organization of Benda-Beckmann et al. (2006), by enforcing statutory law as the dominant or only normative framework, the state gains authority over the layer of ideologies and culture and the layer of legal regulations. Hence, it automatically gains considerable control over the layers of social relations and people's property practices and thus over local patterns of power and domination.

### **Third Concern: Formalizing Property Rights Bears the Risk of Reinforcing Unequal Local Power Structures**

Our third concern is that even if the central state introduces formalized property rights with the best intentions, it still runs the risk of reinforcing unequal local power structures. The implementation and maintenance of a respective regime and thus the expansion of state authority to the local level in a way that supports local people is complex and often beyond the state's capacity. The new legal provisions may be difficult to understand and become commingled with previous property regimes, thus providing ground for contestation. In such situations, local elites may benefit

much more from formalization procedures than the poor. Since property regimes are always embedded in networks of dominance and dependence, local elites are usually in a better position than the less wealthy and less powerful to get their existing claims recognized, or to defend them towards external actors. To a large extent, this is to do with the practice of 'forum shopping' (see text and footnote on page 9), which allows especially wealthier and well informed people to manoeuvre between various normative and cognitive orders to defend their claims over resources.

*Kyrgyzstan: Privatization of arable land and redefinition of pasture use rights*

In rural Kyrgyzstan, the rapid privatization of state-owned farmland contributed to the reproduction of existing disparities between rural elites and ordinary workers (Steimann 2012). In most cases, the distribution of land and other farm assets was carried out by a local commission consisting of former farm leaders, agronomists, local elders, and other well-respected people. Building on two case studies from Central Kyrgyzstan, Steimann shows that the result was often a land distribution that was equal in a quantitative, but not in a qualitative sense (Steimann 2011). In fact, many among the local elite managed to secure undivided land parcels close to their own house, while less well informed people – mostly ordinary farm workers and their family members – often received their land share in the form of several divided parcels. Since these were usually far from the village and difficult to access and irrigate, this has seriously hampered people's ability to benefit from their land in the long run. The same study shows how new claims to farmland emerged once the official privatization procedure was over. In view of their ever-increasing flocks, wealthier local households were soon in need of additional arable land for the production of sufficient winter forage. To this end, many of them have begun to irrigate and cultivate land from a communal land fund. They claim rights to these areas based on arrangements during the Soviet times, yet they use the land without the consent of the communal authorities in charge of the fund and thus without paying any use fees. Such illicit appropriation has become possible because communal control over this land has always been very weak. However, in cases where the local authorities detected such practice, the concerned households usually formalize their claim *ex post* by concluding a lease contract. Wealthy rural households thus make use of their possibilities of 'forum shopping' – i.e. manoeuvring between non-formal appropriation (based on an earlier normative order) and formal recognition – to secure their private claims over land resources. Bichsel et al. emphasize that the new Kyrgyz land property regime thus continues to be conditioned by its preceding regime and by related social relations and local power disparities – irrespective of a seemingly clear allocation and legal recognition



of private and common property rights over land and other natural resources (Bichsel et al. 2010: 264f).

Another example of the central state's incapacity to fully implement formalized land rights is the case of the Kyrgyz pastures. Unlike arable land or livestock, pastures were not privatized after the Soviet collapse, but remained in the ownership of the state. In the late 1990s, a legal framework for pasture use and management was put in place, which allowed individuals and groups to lease pastures from the state. However, the law left many loopholes, and the state authorities were neither able nor willing to enforce it. The result is that pastures have remained highly contested between different actors at various levels (Steimann 2011). At the local level, households have repeatedly secured their access to pastures either by abiding by state law (i.e. conclusion of a formal lease contract), or by negating it. In the latter case, this mainly happened with reference to individual customary use rights (usually based on pasture use practices from Soviet times), or by insistence on often-vague notions of pastures as a common pool resource. This coexistence of norms and claims has repeatedly led to conflicts when leaseholders tried to bar non-leaseholders from using 'their' pastures. Again, in the course of these conflicts, the wealthier leaseholders are usually in a better position than their less wealthy competitors due to their ability to practice 'forum shopping'.

*Tanzania: Knowledge and power differences in defending and registering customary land rights*

The Tanzanian land law (URT 1999a, 1999b) is praised for respecting customary rights and providing management responsibility over rural areas to village bodies (Knight 2010; Alden Wily 2003). Evidence from two case studies, based on qualitative interviews conducted by Locher shows, however, that the law is complex and difficult to understand for many among the local population and even for government officials. It is thus a challenging task for district officials to teach the often-illiterate local population the necessary knowledge on defending and registering non-formal rights. Village leaders – who are usually more educated and have more regular contacts with district officials and better access to the relevant legal documents – often have a lead over other villagers in terms of relevant knowledge and may be able to take advantage of that situation. The formalization of land property also requires registration at village and district level and includes certain costs for landholders. Thus, it might be less accessible for poor people (personal communication by Locher 2011; see also Knight 2010; Pedersen 2010; Odgaard 2006). Also when it comes to defending customary rights, local elites are often in a better position than other villagers, as one example related to the above

mentioned case in the Tanzanian Southern Highlands (see first concern) shows: When district officials by mistake were in the process of demarcating an area which was used by several villagers under customary law, a well situated businessman, who has considerable knowledge about the statutory land law, stopped the officials from surveying his plot. Realising that the village council was the proper authority to impede the demarcation process, he managed to get support from council members (personal communication by Locher 2011). At the same time, other villagers failed to defend their customary rights and lost them to the investor against their will (Locher 2011).

### *Conclusions from the presented cases*

The cases from Kyrgyzstan and Tanzania show that the redefinition of land ownership or use rights by the state may create situations in which legal provisions are unclear or not implemented strictly (for Tanzania see also Pedersen 2010, 2011). The presented examples show that in such situations, even under very different circumstances, local elites often benefit disproportionately from land titling processes. They either build on good connections with state representatives, use their economic potential to practice 'forum shopping', or benefit from the fact that they are more knowledgeable in terms of rules and procedures than other people. That way, former Soviet elites directed the Kyrgyz land privatization according to their own needs, wealthier Kyrgyz households refer to either statutory or customary law to claim access to communal land and pastures, and Tanzanian village leaders can register their land rights easier than poor or vulnerable groups. Also during the land reform in Nepal (see our second concern), a similar process was observed. Local elites who had access to the state power centres and privileges managed to leverage the land-related state structures, institutions, acts and regulations. Thus, despite the declared objective of a more equitable land distribution, mostly large landowners (who frequently control more land than the legal maximum) have benefited from the land reform, while the poor, marginalized and lower sections of society were often badly affected (Kshetry 2011; Pyakuryal and Upreti 2011; Alden Wily et al. 2009; Upreti et al. 2008). All this again illustrates how strongly social power relations determine property regimes. As Meinzen-Dick and Pradhan point out, property rights "are only as strong as the institutions or collectivity that stands behind them" (Meinzen-Dick and Pradhan 2001: 11). Consequently, socioeconomic disparities and the resulting power relations have a considerable influence on what people can or cannot do to claim and secure property rights over resources. This becomes particularly problematic in the case of secondary use rights of landless people, who are often unable to secure their already weak claims in the course of a land titling process (see also FIAN 2010b: 3). The evidence presented here also

suggests that even well intended participatory processes can hardly avoid being strongly influenced or captured by local elites.

## Discussion

Already before the recent rise of foreign direct investments in land, there has been much debate on the use of formalizing poor people's property rights over land and other resources as a means to reduce poverty. In reaction to the wave of neoliberal (land) reforms in the wake of the Washington Consensus, land titling was promoted as the 'silver bullet' for the poor (de Soto 2003). Yet, critics have repeatedly remarked that formalized property rights are no guarantee that poor people can actually access and cultivate land, or can derive any other benefit from it, e.g. through land markets (Borras and Franco 2010; Sikor and Müller 2009: 1309; Cotula et al. 2006; Fitzpatrick 2005). Assies shows for instance that the expectation that formal land titles facilitate access to credit often does not hold true in practice, either because banks are not interested in the provision of small loans to poor people, or because smallholders fear using their land as mortgage security (Assies 2009: 582).

Besides the debate on the use of land titling, there is also some debate on different ways of formalizing customary rights and the related overall objectives. Focusing on the formalization of existing property rights over land and other resources as suggested by the FAO guidelines and the RAI principles we have raised three concerns by arguing from a legal pluralism perspective and building on evidence from Kyrgyzstan, Nepal and Tanzania. In the following, we discuss our concerns in light of the existing debate.

### *Centralist approaches to formalization of existing tenure rights*

Assies shows that in principle, the whole formalization debate has evolved around two contrasting objectives or visions (Assies 2009: 574f, referring to Payne 2000), he names them legal centralist, "marketability-based vision" (where formalization mainly serves to turn land into a marketable good), and "security and rights-based vision" (which aims at strengthening local people's rights and self-determination). According to John Griffiths, notions such as 'recognition' or 'formalization' of existing rights are typical reflections of a legal centralist approach, because they imply that customary laws must ultimately be recognized by a single validating source, i.e. statutory law (J. Griffiths 1986: 8). Such an approach is suggested by the RAI principles. However, a centralist or 'state-led' land reform does not only have important limitations in achieving its targets (Sikor and Müller 2009) but – as we

argue in our second concern – it also inevitably strengthens the state administration at the expense of local communities and individuals. While this is not negative *per se*, our examples have shown how involved state representatives can leverage their position in a formalization procedure to lead reforms astray. Whereas the RAI principles largely ignore this apparent problem, the FAO guidelines propose a series of measures that states can take to recognize property rights in a fair and transparent manner. They thus rather suggest an orientation towards a security and rights-based vision.

#### *Approaches that recognize pluralism and their implementation challenge*

The FAO guidelines propose that: "States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems" (FAO 2012:14). They are thus in line with what Assies suggests for the implementation of a security and rights-based vision (Assies 2009: 586). Assies proposes to 're-institutionalize' existing property regimes wherever possible, i.e. to allow for an overall legal recognition of plural customary tenure regimes, rather than to forcefully subject them to a single, national property system under statutory law (Assies 2009: 586, referring to Bruce 1998). This approach "does not prescribe a specific approach to land reform" but is based on pluralism (Toulmin and Quan 2000: 5, cited in Ubink 2009: 9). An approach that "accommodate[s] the complexity of rights and practices at multiple levels, including especially the local level" (Meinzen-Dick and Mwangi 2008: 43) may also allow recognizing overlapping bundles of rights or protecting existing common property rights from the risk of being privatized in the course of a formalization procedure.<sup>5</sup> We conclude that formalization of land tenure needs to be anchored at the local level. The example of Tanzania, whose Village Land Act of 2001 provides customary rights – be they registered or not – the same legal status as statutory rights under the Land Act 2001, is an attempt in that direction. However, the implementation of such types of land reforms faces its own challenges (Sikor and Müller 2009; for Tanzania see Pedersen 2010, 2011). First, there is often a lack of commitment on different state levels to fully implement respective laws and allocate the necessary means to the local level (Knight 2010: 258). After all, letting others participate in the formalization of property rights means sharing power over

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<sup>5</sup> On the complexity of formal recognition of group rights in general see Alden Wily 2006 and Fitzpatrick 2005, and for Nepal see Alden Wily et al. 2009 and Upreti et al. 2008.

resources.<sup>6</sup> Knight thus concludes that if a reform is not to "face a kind of subtle bureaucratic mutiny" (Knight 2010: 259), it requires broad changes in governance: "state officials need new powers, roles and responsibilities if a new law strips them of their previously-held authority" (Knight 2010: 258).

Second, as we have demonstrated in our examples related to the third concern, and as Wiber states: "The consequences of the introduction of state law into minority regions are not, however, always those planned by state bureaucrats" (Wiber 1992: 487). Formalization processes can be very complex endeavours, which may kindle latent conflicts (Assies 2009: 584; see also Cotula et al. 2006: 20). Hence, they require, besides political will, considerable capacities on the part of the involved state authorities – capacities lacking in many of the countries affected by large-scale foreign investments in land (see also Li 2011; Pedersen 2011). As a consequence, local elites outside the state institutions or certain skilful groups often benefit disproportionately from land titling processes, while claims and rights of the less wealthy and powerful are infringed upon (see also Ubink 2009; Meinzen-Dick and Mwangi 2008; Sawyer and Gomez 2008; Cotula et al. 2006). Since wealth and power disparities are essential constituents of property regimes, even participatory approaches cannot always avoid 'elite capture' or other types of struggles within local communities. Thus, even a clear political will for 're-institutionalization' cannot ensure that all people get treated in a fair manner.

#### *Avoid legal intervention whenever possible*

Due to the outlined challenges, Fitzpatrick suggests that the extent of external legal intervention in customary land systems "should be determined by reference to the nature and causes of any tenure insecurity" and intervention should be avoided whenever possible (Fitzpatrick 2005: 449). This means that in those cases where customary property regimes have worked considerably well so far and where local individuals and communities show no interest in selling their rights to outsiders, the state's role should be limited to recognising existing customary rights as a whole and protecting them against external threats. Thus, existing claims and rights would remain embedded in a given social context and not be incorporated into the mainstream market system. Land would thus remain out of reach for investors. This is much in line with the demands of global farmer organizations such as La Via Campesina who have been fighting for an overall recognition of customary property

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<sup>6</sup> For a conceptual analysis of the reciprocal constitution of property and authority see Sikor and Lund 2009.

regimes beyond statutory law since the 1990s (La Via Campesina 2011). It is certainly not in line, however, with the intentions of the RAI principles, which – even more than the FAO guidelines – emphasize the ostensible advantages of land as a marketable good.

#### *The complexities of participatory land titling*

Nevertheless, there may be justified needs for state interventions at the local level. Customary property regimes may fail to de-escalate local resource conflicts, or – more essential in the context of foreign investments – communities may explicitly wish to create marketability for their land resources. In these situations, Fitzpatrick recommends certain forms of state regulation. However, he also warns of "quick-fix attempts to impose formalized titles on fluid customary interests" (Fitzpatrick 2005: 472). In such cases, participatory approaches are a must. Yet, as we argue in our first concern and unlike suggestions by the FAO guidelines and the RAI principles, these can neither be 'simple' nor 'quick'. Identifying customary property rights is a delicate endeavour, because it usually concerns overlapping bundles of rights, which are embedded in a social and political context and constantly reproduced through people's relations and everyday practices. Our example from Tanzania shows that even elected village leaders are not always aware of all existing claims and (secondary) rights. Yet if common knowledge regarding detailed property rights is absent within a community, it can take a lot of time and money to identify different groups of stakeholders, to understand local patterns of domination and dependency, and to carefully select adequate representatives. In cases where certain land rights are held by external actors (e.g. in the form of patron-client relations), participation may even need to be scaled up beyond the local level.

#### **Concluding Remarks**

When analyzing potential economic and socio-political effects and proposed measures in the context of 'land grabs' it is crucial to gain a holistic understanding of land tenure systems. This article concludes that employing a legal pluralism perspective is very helpful in this regard. Adapting this perspective and using also empirical cases beside the classical examples of 'land grabbing', we have demonstrated that the identification and recognition of customary property rights over land is a very complex and delicate endeavour, which risks neglecting locally existing property claims and rights. Unfortunately, neither the RAI principles nor the FAO guidelines address this challenge in a satisfactory way. First, both initiatives propose to identify existing rights in a participatory manner, an approach that is

certainly indispensable yet anything but 'quick' and 'simple'. Second, the centralist approach to land tenure in the RAI principles does not allow acknowledging legal plural orders and the social embeddedness of local property regimes. Third, even a more security and rights-based vision as brought forward by the FAO guidelines entails the risk of elite capture and of reinforcing unequal power structures within local communities. To some extent, however, it allows for the incorporation of land-related cultural, social and normative practices and of plural legal arrangements and thus for the protection of locally existing tenure rights. It further leaves it to local communities to decide whether their land and natural resources should become a marketable good to outsiders or not. However, in many countries the realization of this vision would require the adaptation of whole legal regimes and national regulations which takes, besides political will, a lot of time for implementation and involves fundamental changes in governance. Further, careful participatory land use planning at the local level could prove to be an additional tool to reduce negative effects of foreign land acquisitions. Completed before any external interests arise, it serves as a basis for local communities to take decisions regarding the availability of land for potential investors. However, the introduction of meaningful nationwide land use planning is a major endeavour. All of these challenges cannot be addressed adequately and convincingly within the framework of such guidelines alone. Instead, more long-term strategies for the protection of customary rights are required. Thus, from an analytical perspective, a moratorium on 'land grabs' as postulated by some civil society organizations (IPC 2011) would be most appropriate. From a more pragmatic perspective though, we acknowledge the FAO guidelines and – to a much lesser extent – the RAI principles as more immediate efforts to reduce negative effects of 'land grabs'. However, investors and host governments should by no means mistake these guidelines as guarantors of ostensibly harmless land acquisitions, as the complexity of plural land orders cannot be underestimated. Even when following the guidelines the risk of infringing upon local people's land rights continues to be very high.

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## Paper IV

Locher M., Sulle E. 2014

**Challenges and methodological flaws in reporting the global land rush:  
observations from Tanzania**

*Journal of Peasant Studies*, 41(4), 569-592

## **Challenges and methodological flaws in reporting the global land rush: observations from Tanzania**

Martina Locher and Emmanuel Sulle

### **Abstract**

Since international awareness of a global rush for land has grown from 2008 onward, various databases and reports have attempted to provide an overview of the situation by compiling information on individual land deals. While providing such an overview is challenging owing to the dynamic and untransparent nature of the investments, flawed methods of using and citing data are aggravating that challenge and allowing dissemination of inaccurate information. The consequences are an unnecessarily blurred picture of the land deal situation and thus an inadequate basis for related political decisions or social actions and a misleading starting point for new research projects. In this article we demonstrate some of the flaws in the use of data and their consequences with examples from fieldwork and literature on Tanzania. The paper illustrates and contributes to the evolving debate on appropriate research methodologies for studying the global land rush.

### **Keywords**

land deals; land grab; databases; aggregated data; methodological flaws; Tanzania

## Introduction

Acquisitions of land by foreign and, to a lesser extent, domestic investors for agricultural purposes have increased rapidly in the last few years, particularly in countries in the global South. This phenomenon, often referred to as ‘land grabbing’ (for a discussion of this term see Hall 2011a, ILC 2011) or ‘the global land rush’ (e.g. Li 2012, Scoones *et al.* 2013a), has been the subject of intense research and debate since around 2008. Relevant literature comprises numerous articles and special issues in academic journals, reports by research institutions and activist groups and multitudinous conference papers<sup>1</sup>. Thus, in the wake of the recent land rush, a ‘literature rush’ (Oya 2013) has emerged. Besides in-depth case studies and thematic analyses<sup>2</sup>, the burgeoning literature includes several reports and databases that intend to give an overview of the land rush by providing compilations of land deals. Such compilations are produced by scholars and non-academic institutions, such as NGOs and international agencies. They exist both on a global scale (von Braun and Meinzen-Dick 2009, Deininger and Byerlee 2011, GRAIN 2012, Land Matrix 2014) and for specific countries (e.g. for Tanzania see Kamanga 2008, Songela and Maclean 2008, Bengesi *et al.* 2009, Mwamila *et al.* 2009, Sulle and Nelson 2009, Oakland Institute 2011a). These more numerical representations of the land rush are increasingly criticised and questioned in a scholarly debate. Critical voices express an urgent need to address issues around the way in which data on land deals are collected and reported. The discussion on ‘one of the most complicated and debated issues in global land grabbing today’ (Edelman *et al.* 2013, 1529, note 3) is taking place informally on blogs (Bräutigam 2013b, Collin 2013a, 2013b), but recently also in academic publications such as Bräutigam and Zhang (2013), Edelman *et al.* (2013), the ‘JPS Forum on Global Land Grabbing Part 2: on methods’, and related commentaries to the latter (e.g. Rulli and D’Odorico 2013, Scoones *et al.* 2013b).

Edelman (2013) and Oya (2013), for example, direct strong criticism at existing research practices. Oya highlights the representation of ‘false precision’ in well-known databases, where ‘sources and reports of unknown reliability are opportunistically combined’ (Oya 2013, 506, referring to Reddy and Pogge 2005, 4). Edelman (2013, 497, referring to Bräutigam 2013a) describes a ‘process of “solidification” and fact creation’, which takes place when ‘preliminary, anecdotal, unverified and moribund cases’ (Edelman 2013, 497) are included in databases. From there, despite disclaimers about the shaky quality, data are being spread in a

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<sup>1</sup> See for example a collection of articles in the Journal of Peasant Studies (JPS Forum on Global Land Grabbing Part 1, Borras *et al.* 2011) and numerous special issues in the JPS and other journals; the Global Commercial Pressures on Land Research Project (Anseeuw *et al.* 2012a); several reports by the International Institute for Environment and Development (IIED) (Cotula *et al.* 2009, Cotula and Vermeulen 2009, Cotula 2011), by the Oakland Institute (Daniel and Mittal 2009), and by the NGO GRAIN (GRAIN 2008, 2010), and conference papers of two international conferences, namely the LDPI (Land Deal Politics Initiative) Global Land Grabbing Conference I at University of Sussex in 2011 and the LDPI Global Land Grabbing Conference II at Cornell University in 2012.

<sup>2</sup> In-depth case studies include e.g. Schoneveld *et al.* 2011; thematic analyses are provided, amongst others, by Margulis *et al.* 2013 and Wolford *et al.* 2013 on governance, Fairhead *et al.* 2012 on ‘green grabs’, Behrman *et al.* 2012 on gender, Locher *et al.* 2012 on initiatives to regulate the phenomenon.

‘circularity of referencing’ (Scoones *et al.* 2013a, 475). Bräutigam and Zhang (2013, 1680) observed for the reporting on Chinese land deals that ‘the nature of circulation is such that the first papers written on the initial analysis of (problematic) data often have much greater impact than papers written later, with revised and better data’. Some problems are also related to the various and sometimes vague definitions of ‘land grab’ or ‘land deal’ (Borras *et al.* 2012a, Cotula 2012, 652, Scoones *et al.* 2013a). As a consequence, ‘non-equivalent data [are] aggregated because we are not agreed on what is being counted’ (Scoones *et al.* 2013a, 475). Lastly, Evers (2012), Edelman (2013) and Oya (2013) discuss underlying methodological and epistemological issues, such as researchers’ basic assumptions, preconceptions and ideological biases as well as their positionality and intentions that influence what they see and how they interpret it (for an example of a clearly expressed political agenda see GRAIN 2013). All of this contributes to biased data that are characterized by questionable accuracy and reliability.

In Tanzania, the picture of the land deal situation is incomplete and, we argue, distorted. The reasons for this are various. First, the phenomenon is by its nature dynamic. For instance, a number of investing companies are being driven out of business (particularly biofuel investors, see Hultman *et al.* 2012, Locher and Sulle 2013). Other companies are sold to new owners and change their names (Chachage 2012, Locher and Sulle 2013). Second, the exploration of the global land rush is hindered by opaque practices on the part of the investors and the reluctance or inability of involved parties, including the host government, to provide information (GRAIN 2010, Cotula 2011, Deininger and Byerlee 2011, 145, Cotula 2012, for Tanzania see Mwami and Kamata 2011, TNRF/REPOA/IIED 2012). Lastly and importantly, as we argue in this paper in line with the ongoing debate, researchers sometimes use questionable methods when documenting and reproducing data on land acquisitions.

The resulting lack of clear data is reflected, for example, in the Land Matrix Global Observatory, the widely cited online global database of large-scale land acquisitions (Anseeuw *et al.* 2013, Land Matrix 2014). The Land Matrix draws on data from several sources including other Internet portals (ILC 2013, GRAIN 2014). It is used as basis for scientific articles (e.g. Rulli *et al.* 2013) and policy briefs (e.g. GRID Arendal 2013). In the beta version of this database, launched in April 2012 (then called ‘Land Matrix Database Number 1’, see Anseeuw *et al.* 2012b), even among the data that were classified as verified and reliable, we were able to find a land deal attributed to a company that no longer exists (Svensk Etanol kemi AB, in short: SEKAB) and a land deal that is reported twice under two different names (AGRICA, formerly InfEnergy Co. Ltd). While these data have been updated in the re-launched version of the Land Matrix in June 2013, we still noted some tricky issues (see below).

The blurred picture of the land deal situation in Tanzania provides an inadequate basis for related political decisions and social actions and a misleading or at least unfavourable starting point for new research projects.<sup>3</sup> Further, as stated by Edelman (2013, 488), the spreading of inaccurate data threatens the legitimacy of activists relying on those data to campaign against land deals, and – as we argue – also the legitimacy of the research community and institutions

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<sup>3</sup> The motivation for this article and particularly for the data compilation in the underlying LDPI working paper 31 came during a workshop where Locher met other scholars starting a research project in Tanzania. Locher realised that these scholars had spent considerable time and resources – like she had done before – to gain an understanding of the status of certain land investment projects in Tanzania in order to choose their case studies.

publishing such data. With this article we aim to give recommendations and stimulate consideration of appropriate data (re)production. We add to the debate on the methodologies used for investigating the global land rush in the following way: We provide insights into the challenges of data collection (related to the way the Tanzanian government handles land deals). We illustrate the difficulty of describing the status of land deals with a single term (as done in databases). We discuss biases related to information from investors' websites and media, and we elaborate specific flaws of data presentation and reproduction, such as inadequate citation, leading to a lack of traceability and further consequences. At the same time our work provides an update of the land deal situation in Tanzania and discusses the gap between announced and realized investments.

The article draws on a Land Deal Politics Initiative (see footnote 1) working paper (Locher and Sulle 2013) in which an updated compilation of land deals in Tanzania is presented in several tables. This compilation is based on a review of the literature and on our own fieldwork conducted in Tanzania between 2008 and 2013. We considered land leases by foreign investors with the purpose of agricultural production, be it for food or biofuels, or forestry plantations for timber and carbon credit trading. Deals for mineral extraction, conservation and tourism were not included<sup>4</sup>. As in the Land Matrix database, deals below 200 ha in size were not considered. Deals that involve exclusively domestic investors were not our initial focus; however, as we had gathered related data during the fieldwork, we presented some limited information on domestic land deals as well. In the following section we provide insights into the challenges of gaining information on land deals in Tanzania. We then highlight some of the flaws in the use of data so far and discuss their consequences. Thereafter, we present experiences from our own attempt of a careful data compilation. We conclude the article with some observations regarding the land deal situation in Tanzania and with considerations on adequate data presentation and traceable data reproduction regarding the land rush phenomenon.

## Situation of foreign land deals in Tanzania

Tanzania is one of many African countries that have received investors from all over the world with the intention of obtaining long-term leases for several thousand hectares of land. The rise in interest in Tanzania's land and related concerns about the consequences for local people and the environment have been widely discussed, not only among academics (e.g. Mwamila *et al.* 2009, Sosovele 2010, Locher 2011, Mshandete 2011, Oakland Institute 2011a, Havnevik *et al.* 2012, Hultman *et al.* 2012, Nelson *et al.* 2012, Neville and Dauvergne 2012, Sulle and Hall 2013) and advocacy groups (e.g. Haki Ardhi/Land Rights Research and Resources Institute (LARRRI), Tanzania Natural Resource Forum (TNRF), Oxfam, ActionAid, WWF Tanzania, Legal and Human Rights Centre (LHRC), Lawyers' Environmental Action Team (LEAT), the platform Let's Talk Land Tanzania 2014), but also in Tanzanian political circles. A private motion tabled by the Member of Parliament Halima Mdee in November 2012 allegedly caused a hot debate in Parliament (Luhwago 2012a). The motion asked that Parliament direct the government to collect and provide up-to-date information on the

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<sup>4</sup> While we are aware that land deals for mineral extraction, conservation, tourism and other purposes are also relevant and deserve scientific attention, our research in the last few years (and hence our collected data) has focused on the recent wave of land deals triggered by 'the triple-F crisis': food, fuel and finance' (Hall 2011b). Forestry investments were included due to their growing relevance in Tanzania in the same period.

amount of land transferred to foreign investors. In reply, the Ministry of Lands, Housing and Human Settlements Development (hereinafter referred to as the Ministry of Lands) declared that the government would thoroughly assess the situation and provide the requested data (Luhwago 2012b). At the time of writing, the government was yet to release the final report on this assessment; however, the main opposition party (Chama cha Demokrasia na Maendeleo, in short: CHADEMA) has already challenged the initial findings of the study (see below).

The process for foreign investors to acquire land in Tanzania is complex and lengthy. Non-citizens are not allowed to acquire land from villages (which falls under the category of Village Land) directly. A non-citizen investor has two options. He or she can obtain derivative land rights – that is a long-term lease of up to 99 years – from the Tanzania Investment Centre (TIC); but this rarely happens due to the limited scope of the TIC land bank. Alternatively, an investor can obtain granted rights of occupancy (long-term leases) from the Ministry of Lands. This usually requires a transfer of land from the category of Village Land to the category of General Land, which is a time-consuming process that can take several years. More details on how village land and general land gets into the hands of foreign investors are summarised in studies by Isaksson and Sigte (2009), Sulle and Nelson (2009), LEAT (2011), and Makwarimba and Ngowi (2012).

## **The challenges of collecting data on land deals in Tanzania**

### ***Lack of central government database***

In Tanzania, various government institutions at different levels are involved in the land acquisition process, but it seems that there is no coordinated storage or exchange of data (Oakland Institute 2011a). When asked by the authors for data, representatives of national government offices often either referred to each other or told us to contact district offices, as accurate information would be available only there. In some cases we may have experienced limited cooperation on part of our interviewees. However, in many cases it appeared that the officials we approached were willing to help, but they themselves did not have a full understanding of the situation (field research by Sulle in 2008, 2009, 2011 and 2012 and by Locher in 2010, 2011 and 2013). Thus, Mdee's parliamentary motion, implying that the government, including the Ministry of Lands itself, currently has no clear overview on foreign land acquisition, mirrors the view held by the authors and by other researchers (Oakland Institute 2011a, 16, Haki Ardhi 2013).

This view is further confirmed by the fact that the Ministry of Lands commissioned the University of Dar es Salaam's economics department to conduct an assessment of ownership of farms – both domestic and foreign – on the Tanzanian mainland (unpublished report<sup>5</sup> cited in Mdee 2013), in an attempt to answer the above-mentioned parliamentary motion. According to information the contracted researchers received from the Ministry of Lands, only 10% of the total land in Tanzania has been surveyed and titled so far, making it difficult

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<sup>5</sup> A draft report by the Department of Economics, University of Dar es Salaam, Tanzania, titled 'Consultancy services to conduct an assessment and evaluation of ownership of farms above 50 acres in Tanzania Mainland 2013' was made available to the authors, but is not publicly accessible. Although the results of this study were expected to be discussed in the parliamentary meeting of April 2013 (Luhwago 2012b), no report has been published yet. However, the Member of Parliament Halima Mdee referred to this study in her blog entry in May 2013 (Mdee 2013).

for researchers to identify the ownership of land plots.<sup>6</sup> This confirms the observation made by various researchers that unavailability of data is a concern. The situation might be partly explained by a staff shortfall in the Ministry of Lands as claimed in a report by the Food and Agriculture Organisation (FAO 2012) and by the fact that the 'Central Land Registry still operates largely as a paper-based system' (FAO 2012, 76).

### ***The complexity and untransparency of the land deal process***

The complex process of acquiring land adds to the challenge of gaining an up-to-date understanding of land deals in the country. Even if it could be assumed that the Ministry of Lands had all relevant data on investors holding derivative rights and rights of occupancy, the long process that investors must go through before obtaining such titles does not seem to be documented in a central institution. While the TIC is supposed to guide and support any investor in the land acquisition process, it cannot oblige investors to approach it. Many investors seem to approach district or village authorities without contacting the TIC beforehand. An example is the case of the New Forests Company, which allegedly became active in Kilolo District through contact with the district's Member of Parliament (interviews with district land official and several village leaders by Locher in 2011). The TIC is thus not aware of all ongoing investment processes. Yet, it would be important to know about investments in their early stages – not only for the sake of having the whole picture, but also because it seems to be a common practice among investors to start activities on their land before completing all of the paperwork (interviews with TIC and district land officials by Locher in 2010 and 2011). BioShape in Kilwa district, for example, went ahead with logging of natural forest found in the land allocated to it before securing a timber-harvesting licence from the Ministry of Natural Resources and Tourism (Songela and Maclean 2008, Sulle and Nelson 2009). The company was never held responsible for these activities, rather it was awarded a timber harvesting license and it established a sister company to process timber in Arusha (Sulle and Nelson 2013).

### **Flaws in the documentation and reproduction of data**

As elaborated above, to a certain degree, misleading data might be unavoidable due to the changeable nature and lack of transparency of many land-based investments. However, inaccuracies are also created during the research and reporting process. Several flaws can be found in existing publications on land deals in Tanzania, related to both the documentation of primary data and their reproduction. In the following section we present the most common flaws and discuss their potential consequences. Though we quote existing reports for the purpose of illustrating our observations, we do not intend to criticise individual authors. Rather we seek to demonstrate by example the consequences of the lax standards in reporting of land deals that seem to have been established over the last few years.

### ***Imprecise indication of status of land deals***

The data that are provided in reports and databases are often insufficiently specific in terms of the stage of land acquisition. Some datasets do not distinguish between announced plans

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<sup>6</sup> 'Unsurveyed land' means that the government has not conducted a proper legal designation of borders and has not registered the use and category of ownership for this plot. However, unsurveyed land managed under customary law can still be owned and considered legal property by Tanzanian citizens (Village Land Act, see URT 1999). Unsurveyed land cannot be allocated to foreign investors directly, but to domestic ones.

and initiated or completed land deals (e.g. GRAIN 2008, Land Matrix 2012). Others give indications such as ‘planned’, ‘signed’ or ‘implemented’ (e.g. in Görgen *et al.* 2009, Friis and Reenberg 2010). However, without a detailed description this information does not help us to understand the actual status of a land acquisition project. For example, investors might ‘sign’ an expression of interest (e.g. in village meeting minutes) and start to plant their crops (‘implemented’), before having finalised the formal land acquisition process, thus not having any rights to this land according to state law. This example highlights the challenges of presenting a complex phenomenon in a generalised way with summarised short texts, as is often done in inventories of land deals.

One can argue that it is not relevant to distinguish between the different stages of a land deal if the intention is to demonstrate investors' interest in (Tanzanian) land (see also Anseeuw *et al.* 2013). However, when it comes to implications of land deals, there is a significant difference between a land deal that was merely announced and withdrawn before any action on the ground was taken, and an investment project that has been partly or fully realised. The precise information regarding the stage of a project can also be relevant for decisions on new research.

Whereas this first flaw is related to the specific content of a dataset, the two following issues concern scholarly practices of dealing with sources of data.

### ***Presentation of data sources: aggregated and thus untraceable***

One of the most common and significant flaws created by researchers is related to the documentation of data. While it is an established standard in academic literature to clearly and precisely provide the sources for presented data, in the – often grey – literature that addresses large-scale land deals it has become common practice to provide sources for information regarding land deals in an aggregated way. Information on multiple land deals is usually presented as a list of investors in a table or in small paragraphs. The sources for the data are then given as a whole for the total compilation, either at the bottom of the table or in the methodology (or another similar) chapter. The sources typically comprise empirical data collected by the authors from several sources as well as data from other literature. An example of such a table is provided in a report by the Oakland Institute (2011a, 17f), where the sources given at the bottom of the table include fieldwork, three government institutions and four earlier publications. Other examples are provided in Songela and Maclean (2008), Görgen *et al.* (2009), Mwamila *et al.* (2009), Sulle and Nelson (2009), and Kashaigili and Nzunda (2010). A recent publication by the FAO (2012) provides a table with partially outdated information on the ‘status of recent investments’ with the following weak citation: ‘Compiled by authors from various sources’ (FAO 2012, 77).

The practice of giving sources in an aggregated form creates problems. It makes the source of information and details regarding individual land deals difficult or impossible to trace. As a result, it is difficult to judge the quality of a single piece of information. For example, looking at such a table alone, it is impossible to know whether information on a given deal is recent and confirmed by the authors or whether it is based on one of the other indicated sources, which may be older or considered less reliable. It is also not possible to follow up the development of a land deal by contacting the same source of information or to triangulate the data by deliberately choosing a different source (as opposed to choosing it by chance, where



there is the risk that one could draw on the same source again). Another potential consequence of this practice is described in the following section.

### ***Reproduction of data: incomplete citations***

Publications that rely on data from earlier compilations (as described above) often cite only the authors of those compilations and omit the primary data sources. Examples include reports from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, formerly Deutsche Gesellschaft für Technische Zusammenarbeit GTZ; see Görden et al. 2009), Kashaigili and Nzunda (2010) and the Oakland Institute (2011a). All of them rely to a certain extent on the IIED (International Institute for Environment and Development) report of Sulle and Nelson from 2009<sup>7</sup> and quote it accordingly, but they do not acknowledge the original sources of data which Sulle and Nelson give in their compilation, namely own fieldwork and information from three other publications: Kamanga (2008), Kulindwa (2008), and Songela and Maclean (2008). Also Sulle and Nelson applied this practice: they quoted Kamanga (2008) and the other authors in a table, but did not provide those authors' sources of information. For readers of the above-mentioned more recent publications (such as the GIZ/GTZ report), it thus appears that Sulle and Nelson collected all the given data themselves in 2009, while in fact the data stem from several sources, including the sources used by Kamanga (2008) and the other authors. Aside from issues related to the acknowledgment of intellectual property, this practice can imply that certain data are newer than they actually are. In the presented examples, the data are apparently from the 2009 IIED report (Sulle and Nelson 2009), whereas some of them are in reality from the three reports of 2008, on which Sulle and Nelson rely. Such a time difference, be it only one or two years, can be significant in the area of fast-moving land deals.

Another consequence is again – as for the problem of the aggregated provision of sources – related to the judgment of the quality of published sources. However, in the case of omitted sources it is even more critical, as the readers are not made aware that the given sources provide secondary data only. Readers are not provided the chance to judge for themselves, unless they are willing and able to scrutinise the quoted publications. Hence, readers might assume a certain quality that is not necessarily given. Later publications might quote sources that seem reliable, though they might be based mainly on weak data (for example when quoting the GIZ/GTZ report by Görden et al. 2009, which is to a large extent based on media articles).

### ***Misleading information: reporting of dead deals and duplication***

As a consequence of methodological flaws – we argue – the Tanzanian literature contains several instances where land deals that have ceased or been aborted continue to be reported and where the same deal is reported twice.

The Oakland Institute report (2011a, 18) lists in its compilation of Tanzanian land deals the investor Korean Rural Community Cooperation (KRC) as having acquired 15,000 ha of land in Rufiji district<sup>8</sup> (in accordance with respective announcements in the media: TanzaniaInvest

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<sup>7</sup> Görden et al. (2009) do not explicitly refer to Sulle and Nelson (2009), but to Cotula et al. (2009), whose data for Tanzania are based on the data published in Sulle and Nelson (2009).

<sup>8</sup> In the Oakland Institute report (2011a) the KRC is named Korean Rural Development Cooperation, deviant from other sources that name it Korean Rural Community Cooperation. The publication provides some detailed and more

2009, Ng'wanakilala 2010, Rugonzibwa 2010). However, according to recent information from an official at the Rufiji Basin Development Authority (RUBADA)<sup>9</sup> the project had been based on a Memorandum of Understanding (MoU) only and no land was acquired. The MoU expired in August 2012 before the company had begun any operations aside from conducting a feasibility study. RUBADA is currently looking for a new investor for this area (RUBADA official, personal communication by Sulle in 2013).

Friis and Reenberg (2010), Kaarhus *et al.* (2010) and FAO (2012) all list a project from the Dutch company BioShape, which ceased its activities in Tanzania in 2009 and went bankrupt in 2010 (Chachage and Baha 2010, Valentino 2011). Of course, reporting the deal is justified, as there had been a land acquisition process and initial activities were implemented; implications for local people might still be relevant (particularly if the project is to be continued by a future new owner, see Valentino 2011). However, the way that the case is reported should not imply that the company BioShape is still active.

The Oakland Institute (2011a), probably referring to a figure obtained in Kaarhus *et al.* (2010), lists the Swedish company EcoEnergy (formerly SEKAB) as active in a process to acquire 200,000 ha in Rufiji District while according to indications from our sources (Rufiji District Natural Resources Officer interviewed by Sulle in November 2012, company manager interviewed by Locher in 2010, Agro EcoEnergy Tanzania Ltd 2013), the company – with full name Agro EcoEnergy Tanzania Ltd. – has been focusing on developing its land plots in the district of Bagamoyo since around 2010, and there do not seem to be more plans for securing land in Rufiji District at the time of writing. Nevertheless, news on the United Nations Research Institute for Social Development (UNRISD) website in November 2011 stated that 'SEKAB has already planted 20,000 ha in Tanzania's coastal region and has plans to expand this to 400,000 ha' (Chinweze *et al.* 2011, para. 6). The FAO publication of 2012 also mentions SEKAB as requesting 250,000–500,000 ha. This was after the company named 'SEKAB Bioenergy Tanzania Ltd' had ceased to exist and the activities had been handed over to Agro EcoEnergy Tanzania Ltd in October 2009. Agro EcoEnergy Tanzania Ltd founded a new company 'Bagamoyo EcoEnergy Ltd' in 2010 (Agro EcoEnergy Tanzania Ltd 2013, BRELA 2013). Further, according to our sources (see above), the project has planted a maximum of around 8,000 ha so far, if at all (not 20,000 ha). In Bagamoyo, the company has a maximum of about 8,000 ha suitable for sugarcane plantation and the rest of the 12,000 ha is expected to remain a buffer zone (district official interview by Sulle in 2012).

There is also a deal reported twice under different names: the Land Matrix in its beta version (Land Matrix 2012) reported the InfEnergy Company Ltd as a separate company from AGRICA; in fact the former is the earlier name for the latter (in both cases the local subsidiary is Kilombero Plantations Limited). In principle, InfEnergy changed its business plan, and thus its name, from oil palm for biodiesel production to the production of rice for local and international markets (Chachage 2012).

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precise information about the investor's plans in a separate box on page 21; however, the information in the table suggests that said land is already acquired.

<sup>9</sup> RUBADA is a statutory organ, established in 1975, that manages several plots of land in the Rufiji Basin (Mwami and Kamata 2011:18).

## Attempt at a careful compilation of land deals in Tanzania

In Locher and Sulle (2013) we provide an inventory of known land deals in Tanzania, compiled in a number of tables. Data in these tables are based on our own field research from 2008 to 2013 and on a thorough study of academic and grey literature. While we do not claim to present a complete picture of all information available, we have made considerable efforts to collect relevant literature from different sources, including from our interviewees from Tanzanian academia and NGOs.

This compilation differs from other reports in the following ways (for an illustration see *table 1*). First, the status of a land deal, if known, is indicated as precisely as possible. Second, where possible, information on the earlier legal status and use of the land in question is given. Third, as sources for our compilations, we used primary data only. We define these as data collected by an author or authors based on materials from involved government offices (e.g. Kaarhus *et al.* 2010 use a table on companies involved in biofuels by the Ministry of Energy and Minerals) or information from interviews with involved government officials, local key persons or representatives of the investing company, or direct observations in the field. Secondary data (data from reports quoting other publications) are not included in our tables. As a consequence, for example, the widely cited IIED report by Cotula *et al.* (2009) is not used for our compilation, as its information on Tanzania is entirely based on a then unpublished study by Sulle, commissioned by IIED, which was soon after released by Sulle and Nelson (2009) as an IIED report.

Often, the compilations of data in other publications do not allow the reader to distinguish the primary data from the secondary data easily (looking at the tables alone). In many cases it is possible, though, to draw assumptions about the primary data from the chapters on methodology (e.g. by considering the districts visited by authors). We generally also assumed that data from presented case studies were primary data. Further, we tried to identify the original data by filling in our tables in chronological order of publication dates (or dates of data collection), starting with the oldest reports. We could thus see which information provided by a more recent report was new and which information seemed to be copied from an older source. In the last column of our tables, we give the precise source of data for each land deal, and we refer to that source in a short version in brackets for detailed information in the other columns of the tables. This is particularly interesting in the case of contradictions. This procedure, though laborious and less easy to read, ensures that the given information is traceable.

Media reports proved to be an unreliable source and were only used exceptionally in our tables. Information from investors' websites is partly included, but needs to be treated with caution as well. The problem of bias in media articles has been reported elsewhere (see discussion below). Additionally we found that media articles often report the stated intentions of investors as if they were established land deals. The same applies to investors' websites. However, such announcements do not necessarily materialise as projected. Examples are the investor CAMS Agri-Energy Tanzania Ltd reducing its plans to acquire 208,000 ha, as announced in the media in 2008 (Obulutsa 2008), to 18,000 ha or even less (a plan which is as yet unrealised) and the investment plans of Saudi Arabian investors, reported by Reuters in 2009 (Karam 2009), which so far seem to remain just an intention. Green Resources AS, while having closed its subsidiary Tanga Forests in Pangani District in July 2012, was still reporting land acquisitions and plantations of 9,500 ha on its website in June

**Table 1: Deals by foreign investors and joint ventures by Tanzanians and foreigners (extract for illustration)**

No.	Investor (nationality, contact details)	Location (district)	Product and purpose	Acquired land and planned total size (ha)	Land status before acquisition	Status, business model, additional information	Sources of information
1	<p><b>30 Degree East</b></p> <p>Partnership between Mauritian (holding 90%) and Tanzanian investor (10%)</p> <p><i>Formally known as Sun Biofuels owned by an investor from the UK</i></p> <p><i>sold to the new investor probably in 2011</i></p>	Kisarawe	Jatropha for vegetable oil and biodiesel	<p><b>8,211</b> (<i>derivative right</i>: Sulle and Nelson 2009, Oakland Institute 2011a)</p> <p><b>11,226</b> (<i>village negotiations</i>, Songela and Maclean 2008)</p> <p><b>8,000</b> (Maltsoglou and Khwaja 2010, Kashaigili and Nzunda 2010)</p> <p><b>9,000</b> (<i>granted, final stage of acquisition</i>, Bengesi <i>et al.</i> 2009, Mwamila <i>et al.</i> 2009)</p> <p><b>9,000</b> <i>acquired</i> (LEAT 2011)</p> <p><i>Requested: 18,000</i> (Songela and Maclean 2008, Maltsoglou and Khwaja 2010, Oakland Institute 2011a)</p> <p><b>50,000</b> (Bengesi <i>et al.</i> 2009, Mwamila <i>et al.</i> 2009)</p>	<p>Village land</p> <p>from 10 villages (LEAT 2011)</p> <p>11 villages (Theting and Brekke 2010, Oakland Institute 2011a)</p> <p>Muhaga village provided 1,500 ha of their total 5,000 ha to the company (Theting and Brekke 2010)</p>	<p><i>The following information is for the earlier company Sun Biofuels:</i></p> <p>Plan to create 5,000 jobs (Bengesi <i>et al.</i> 2009, Songela and Maclean 2008)</p> <p>Compensation intended: just over 35,000 TSh/ha (Songela and Maclean 2008)</p> <p>Acquired 8,000 ha of land at a lease of 99 years. Work commenced on the clearing of land in June 2009 in preparation for planting. The company planted the first 600 ha of jatropha in November 2009 (Kashaigili and Nzunda 2010)</p> <p>Conflicts about compensation; salary above minimum wage, but questionable working conditions (Theting and Brekke 2010)</p> <p>Procedures of land acquisition not adhered to, manipulation; employment provided; access to land and water resources denied (LEAT 2011)</p> <p>Started in 2009, land not all yet planted (Oakland Institute 2011a)</p> <p>Jatropha plantation and envisioned out-grower scheme. The latter wasn't implemented until its collapse in 2011 (Haki Ardhi 2013)</p> <p>The company went bankrupt in early 2012. It has laid off overnight about 750 workers and failed to fulfil its socio-economic promises. The company was also reported to be in the process of selling its properties to new investor (The Guardian 2011)</p> <p>'A British biodiesel company (...). The project was suspended in 2011, and sold to a new owner who is planning to continue with the investment. There has arisen a lot of issues on compensation for the loss of lands and assets on that land.' (Havnevik <i>et al.</i> 2012)</p>	<p>Songela and Maclean 2008</p> <p>Mwamila <i>et al.</i> 2009 (fieldwork Jul/Aug 2009)</p> <p>Sulle and Nelson 2009 (Sulle field visit March 2009)</p> <p>Bengesi <i>et al.</i> 2009 (data from Ministry of Agriculture, Food Security and Cooperatives)</p> <p>Maltsoglou and Khwaja 2010 (source unclear)</p> <p>Kaarhus <i>et al.</i> 2010 (data from Ministry of Energy and Minerals, July 2010)</p> <p>Kashaigili and Nzunda 2010 (fieldwork)</p> <p>Theting and Brekke 2010 (fieldwork, probably in April 2010)</p> <p>LEAT 2011 (fieldwork in May/June 2011)</p> <p>Oakland Institute 2011a (fieldwork in Dec 2010)</p> <p>Carrington 2011 (media article in The Observer)</p> <p>The Guardian 2011</p> <p>Havnevik <i>et al.</i> 2012 (fieldwork)</p> <p>Haki Ardhi 2013</p>
2	<b>Africa Biofuel &amp; Emission Reduction Company (Tanzania)</b>	Bihara-mulo	Croton megalocarpus ( <i>planned</i> )	<b>60,000</b> (Kamanga 2008)		Initial plan: plantation and collaboration with independent growers (providing them with education and technical support); but lack of funds, not operational, probably abandoned plans	Kamanga 2008 (field research, data from Ministry of Energy and Minerals, Ministry of Agriculture, Food Security

No.	Investor (nationality, contact details)	Location (district)	Product and purpose	Acquired land and planned total size (ha)	Land status before acquisition	Status, business model, additional information	Sources of information
	<p><b>Ltd</b> (Tanzanian, USA)</p> <p>Africa Biofuel &amp; Emission Reduction (East Africa) Ltd (ABEA) www.africabiofuel.com</p> <p>Joint venture between TTT (Tucson Transatlantic Trade Holding Group, Inc) Wilma Biofuel and Emission Reduction Company, part of US Wilma (World Institute for Leadership and Management in Africa) Group and National Investment Company Ltd (NICO), Tanzania (Wilma 2006)</p> <p>Managing Director Christine Adamow</p> <p>P.O. Box 14317, Kagera</p>		<p>(Kaarhus <i>et al.</i> 2010)</p> <p>For biofuels and carbon credits</p>	<p><i>Planned:</i> <b>20,000</b> (Songela and Maclean 2008)</p>		<p>(Songela and Maclean 2008)</p> <p>In 2008, the company won the World Bank Development Marketplace Award, a competitive grant program for innovative, early stage development projects (DM 2008)</p> <p>Acquisition under process, contracts expected in 2010 (Managing Director Christine Adamow, in a mail to Locher on 30 April 2010)</p> <p>According to a government official, the company was stopped by the Vice-President Office due to a land-related issue (Commissioner of Ministry of Energy and Minerals, interviewed by Locher in July 2012)</p> <p>TIC officials have no recent information about this company (TIC officials, interviewed by Sulle in Dec 2012)</p> <p>The company's website's latest news is dated Nov 2011; no clear information about status in Tanzania (ABEA website)</p> <p>Two mail requests in Nov and Dec 2012 to the Managing Director (by Locher) were not replied</p> <p>Registered in BRELA (2013) as incorporated on 11 Aug 2006</p>	<p>and Cooperatives)</p> <p>Songela and Maclean 2008 (probably based on interviews with government officials)</p> <p>Kaarhus <i>et al.</i> 2010 (data from Ministry of Energy and Minerals, July 2010)</p> <p>Mail contact by Locher with company's Managing Director Christine Adamow on 30 April 2010</p> <p>Interview with Commissioner of Ministry of Energy and Minerals by Locher in July 2012</p> <p>Officials of Tanzania Investment Centre (TIC) interviewed by Sulle in Dec 2012</p> <p>Development Marketplace (DM) 2008</p> <p>Wilma 2006 (investor's brochure)</p> <p>BRELA 2013</p>

Source: Extract of table 1 in Locher and Sulle (2013, 7f), slightly adapted; sources for the information in the table: fieldwork by the authors and several publications providing primary data (see column 'Sources of information' for short indication and the reference list). Please note: Information is given as per December 2012.

2013, even though the land acquisition process was never fully completed and the plantations have been handed over to the district administration (interview with former Town Planner of Pangani by Locher in 2013).

## **Updated summary of large-scale land acquisition in Tanzania**

After an extensive literature review, online research and fieldwork in several districts, we were able to update and improve the accuracy of information on large-scale land deals in Tanzania. However, there remain a high number of projects for which data are scanty. For many projected land deals it is still not possible to say whether they are only announced intentions, which might have been withdrawn already, or whether they are about to be realised in the near future.

### ***Large differences between numbers of announced and realized land deals***

Based on the tables in Locher and Sulle (2013) we make the following observations. A total of 62 land investment projects of foreign, domestic and unknown origins are listed; of these, only around 30% (18 deals) have reportedly concluded their land deals so far<sup>10</sup>. About half of the deals are so far only announced or with ongoing land acquisition processes, thus their fate is still unclear. 12 projects have been ceased. If we look at foreign investments solely and only consider the more reliable information, the ratio of the concluded out of the listed projects is 10 to 26; five projects have ceased (more detailed figures see below). Hence, the number of failed and not (yet) concluded land deal projects is high. The reasons for the abandoned or never-realized projects are mainly related to challenges during the land acquisition process (half of the listed projects). Investors face problems in acquiring the full amount of land they require, they encounter disputes around local land rights that cannot be solved within reasonable time or they do not agree with additional fees they would need to pay, e.g. for land use planning. The other major reason given is financial difficulty. This is sometimes intertwined with the costs and long duration of the land acquisition process, or investors claim general funding problems. Also for the announced or ongoing projects, of which the land deal is not concluded yet, major problems related to the land transfer are reported. This suggests that although foreign land deals in Tanzania are promoted by the government and much debated in the public and in academia, the realization of these investments faces challenges and is, so far, going on at a very limited pace and scope.

This also holds true for investments in the most prominent sector of recent land deals in Tanzania, those with the purpose of producing biofuels (mainly jatropha). Many of these projects, announced around 2005–2008 and reported in 2008 and 2009, have not become operational so far. Besides seven projects that we list as ceased or not having started the land deal process at all, we list 25 biofuel projects as (potentially) ongoing. However, the majority of them are reported by a number of studies (see Locher and Sulle 2013) to be having problems with funding or with the land acquisition process as outlined above, or there is only little information available even from the district officials, which might indicate that these land deals are not being pursued yet or anymore. At the time of writing, we have indication of

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<sup>10</sup> As we stated above, it is very difficult to get detailed information about the formal status of an individual land deal. Hence, our figures here are rather estimates, based on the indications we have. The actual number of legally concluded land deals might be even smaller, as according to our experience land deals are often reported as concluded before they actually are.

only one biofuel investment with an active plantation (30 Degree East in Kisarawe<sup>11</sup>). The global financial crisis of 2007–2008 and a poor understanding of energy feedstocks, among other reasons, have driven a number of companies such as BioShape Tanzania Ltd and Sun Biofuels out of business (Sulle and Nelson 2013).

### ***Recent trends in land deals***

As stated above, most of the biofuel projects, which constituted the major part of the first wave of recent land deals in Tanzania and some other parts of the globe, have not been realized yet. Furthermore, there seems to have been little new interest in this sector in the past few years. The decreased interest can be ascribed to the limited economic viability of some envisioned biofuel crops and also to a lack of policy, institutional and legal frameworks in Tanzania (Hultman *et al.* 2012, Sulle and Nelson 2013). Our analysis shows that the most recent land-based investments mainly concentrate on food production, particularly rice, sugar and palm oil. Some of these projects have already become operational. We also observed that forestry plantations account for a considerable portion of approved land deals and planted area. As observed during our own data collection, apart from the production of soft and hard wood, investors in forestry plantations target additional income from carbon sequestration, so far mainly on the voluntary market, but also with the aim of getting registered under the Clean Development Mechanism (CDM), a climate change mitigation measure developed under the United Nations Framework Convention on Climate Change (UNFCCC). This corresponds to the analysis by Deininger and Byerlee (2011) on the rise of forestry plantations globally (see also Cotula 2012, 651, on his assumption that forestry projects might be under-represented in the Land Matrix – and probably also in other compilations, as we would assume). However, the largest forest investor in Tanzania so far, Green Resources SA, has closed one of its subsidiaries and might withdraw some of its other investment plans (interview with former Tanga Forests Ltd. Plantation Operations Manager by Locher in February 2013). Hence, the relevance of this sector in Tanzania remains uncertain.

### ***Comparing land deals***

Based on our analysis, the following estimates of the extent of land deals in Tanzania can be given. Land deals by foreign investors (and joint ventures between Tanzanian and foreign investors), whether announced, ongoing or concluded land acquisition processes, number 34 deals and amount to a total area of around 1,000,000 ha. However, of this amount, only 21 deals with totally around 555,000 ha are reported by at least two different sources and can thus be considered as verified with certain reliability. Information on the remaining area is based on one source only, or there is conflicting information from different sources. Of the verified deals, an area of 30,000 ha derives from three deals that are so far only announced (i.e. according to our sources, the land acquisition process has not been initiated yet). An area of around 380,000 ha derives from eight land deals with ongoing land acquisition. Of these, 325,000 ha stem from the AgriSol Energy deal; although its land acquisition process seems to be initiated (Oakland Institute 2011b), the deal seems contested and its continuation questionable (Ruhiye 2012). Finally, according to our analysis, 10 deals with a total area of 145,000 ha can be considered as concluded deals. These figures are lower than the comparable figures (i.e. land deals by foreign investors with indication 'land acquired' or 'concluded deal') presented in other recent compilations. The Oakland Institute (2011a, 17f) compiles 18 deals summing up to around 275,000 ha, GRAIN (2012) lists 10 deals with a total

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<sup>11</sup> 30 Degree East has reportedly bought major shares of Sun Biofuels to develop biodiesel from jatropha (Locher and Sulle 2013). To-date, communities in Kisarawe still call the investor Sun Biofuels.

of 542,000 ha and the recent Land Matrix (2014) shows 28 deals amounting to 281,777 ha<sup>12</sup>. Although it can be assumed that some of the currently ongoing land deals will be concluded – and hence the figures of our compilation will get closer to what other databases present –, our analysis also shows that started land acquisition processes do not necessarily succeed.

Our compilation of ceased or aborted deals (table 4 in Locher and Sulle 2013) lists 12 projects<sup>13</sup> with a total area of around 300,000 ha. Around half of these projects had already started the land acquisition process; the others were just ‘intended’ investments. In addition to these are projects that had temporarily ceased all of their activities (regarding land acquisition and land-based investments) and been sold to other investors, and projects given up in a district, but continuing in another district, which are not included in this figure.

In addition to the land deals by foreign investors, investments of unclear origin amount to around 37,000 ha (seven deals), of which most are based on rather vague data sources. Domestic deals amount to approximately 20,000 ha for nine deals (tables 3 and 2 in Locher and Sulle 2013). It was not our original aim to focus on land deals by domestic Tanzanian investors. That is one reason for our table in Locher and Sulle (2013) on domestic deals being rather short. The other reason is that we included only deals above 200 ha in our inventory, and the size of purely domestic deals tends to be much smaller than deals involving transnational investors (for a list of domestic deals, see Bengesi *et al.* 2009, Mwamila *et al.* 2009, for a detailed overview of the Tanzanian owners of former National Agricultural and Food Corporation (NAFCO) farms and other land portions accumulated by local elites see Chachage and Mbunda 2009). This was also confirmed by the recent report produced by the University of Dar es Salaam for the Ministry of Lands<sup>14</sup> (cited in Mdee 2013), which focused on land deals above 20 ha. Although the average size of individual land deals by domestic investors is considerably smaller than the typical size of land deals by international investors, the number of domestic deals might be far higher than the number of transnational deals. Hence, in our view, this phenomenon deserves more public and academic attention in the near future.

### **Summarizing and discussing: how reliable are compiled data?**

Widespread debates on foreign (and domestic) land acquisitions and their potential consequences are going on globally among academia, political circles and civil society, yet the question of reliable data on the phenomenon remains a major concern. Taking the example of Tanzania, we have shown that even after intensive research by many individuals and institutions, it is still not possible to provide a clear picture on foreign and domestic land deals. Besides illustrating the challenges facing researchers in accessing relevant information, we have presented a number of issues related to the presentation and reproduction of data on land deals.

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<sup>12</sup> Our own figures (Locher and Sulle 2013) date from end of 2012; for better comparison with the Land Matrix figures one may consider the following: when we accessed Land Matrix data on 4 July 2013, the re-launched database listed 23 deals amounting to 285,000 ha. Figures in the earlier Land Matrix beta version were even higher.

<sup>13</sup> Projects of the same company in different districts are counted as one – if every (projected) land deal in every district is counted separately, the total figure of ceased or aborted deals amounts to 17 projects.

<sup>14</sup> See footnote 5.



In the case of several publications on land deals in Tanzania, sources are given in aggregated, incomplete and inaccurate ways. This is comparable to the ‘reporting problem in databases’ that Oya (2013, 509) found with the Land Matrix and the GRAIN compilation. The related problem of readers being unable to trace the original sources of information results in neglected quality checks, ‘recycling of facts long after their sell-by date’ (Scoones *et al.* 2013a, 475), hence reporting of ceased or never realized land deals, and double reporting of deals under different names. Thus, we have illustrated with examples from Tanzania that “data” compiled in a “base”, “set”, or table has a way of assuming a credibility that may not be merited when its origins are examined more closely’ (Edelman 2013, 495).

Another major problem is related to the strong reliance on media sources in research on the global land rush. Media reports, at least if taken alone, provide a distorted picture in many ways. In addition to the identified selection biases summarized by Scoones *et al.* 2013a (e.g. by host region and country, by investor country, by foreign vs. domestic origin, by scale; see also Borrás *et al.* 2012b, Cotula 2012, Oya 2013), we assume that journalists focus on investments that provide exciting headlines, such as those that result in conflicts and protests. This bias, which could be called ‘bias towards land deals with spectacular outcomes’, might lead to an under-reporting of deals that draw less public attention, namely deals that create fewer conflicts or perhaps even positive outcomes for local people. We have further illustrated that in Tanzania’s case, over-reporting not only happens through the tendency of media reports to round up figures on acquired land sizes (Friis and Reenberg 2010, Deininger and Byerlee 2011, 50), but also when media articles present investment projects as active, though they are just announced plans that might never be implemented.

More importantly, we found that announcements made by investment companies, labelled as a ‘reliable source’ in the Land Matrix’ beta version (2012)<sup>15</sup>, are of similarly poor reliability. There are not only investors that seek to conceal information on land deals from the public, but also companies that announce land investment projects as operational (possibly in an attempt to attract investors) when in fact these projects have either already ceased or the land deals have not been started yet. Thus, both media reports and information by investors contribute to ‘under-reporting’ and ‘over-reporting’ (Pearce 2013) of land deals alike.

The re-launched version of the Land Matrix database in June 2013 has considerably improved in several points. Yet, it continues to rest partly upon questionable sources such as media articles and research reports that do not include primary data, but are wholly based on other sources (e.g. Exner 2011). Hence, general statements based on a sum of entries in the Land Matrix (2014), such as for example on the total number of concluded deals, remain vague estimates on shaky ground.

While in this paper we have highlighted some methodological flaws in the way land deals are reported, we can only speculate about the reasons for these (at least for academic purposes) unusual practices. They might be partly ascribed to the challenges of getting information or related to the untransparent nature of the land rush phenomenon itself. The practices might also have to do with convenience and limited resources, as it is very time-consuming to report details of the deals and data sources as precisely as we propose here. Moreover, they might

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<sup>15</sup> The description of the Land Matrix’ reliability code 1 (out of a spectrum of 0–3) reads as follows: ‘Land transactions reported in sources that we judge reliable including for example: research papers [...], company websites [...], government records’ (Anseeuw *et al.* 2012b, 48).

also be related to the non-academic nature of many reports, which are produced by representatives of NGOs or development agencies, sometimes under considerable time pressure and with a significant preference for presenting their findings in pleasant readability. These reports often have the advantage of being published quickly and reaching a broad audience – an important point in this fast-moving field. Thus, some of these procedures might have been justified at the beginning of the land rush to quickly draw attention not only of activists, governments and the wider public through media, but also of concerned scholars (see also Scoones *et al.* 2013a). However, we argue, now it is high time to place emphasis on sound research based on empirical evidence.

## A way forward

### ***Future compilations of data on land deals?***

We do not question the usefulness of compilations or inventories of land deals in general (in this point we agree with Rulli and D’Odorico 2013). If understood as an imperfect pool of existing information about the land deal situation, and not as unbiased and accurate representations of the reality, they might be helpful starting points for further in-depth research. In the absence of alternatives they might also, to a limited extent, provide a basis for political decisions and social actions, if consulted with due care. However, in any case, such compilations need to be drafted in a way that pays attention to the nature of the phenomenon and the related quality of the data.

### ***Detailed information on processes, not simple figures***

The recent land rush is far too complex to be captured by simple figures in simple lists. We agree with McCarthy *et al.* (2012, 523) that land acquisitions should be conceptually understood as a process with several stages (see also Anseeuw *et al.* 2013, 523ff, on different space-related ways of measuring large-scale land acquisitions, adapted from Chouquer 2012, and Scoones *et al.* 2013a, 475). This is not only necessary to distinguish between ‘real’ and ‘virtual land grabbing’<sup>16</sup> as McCarthy *et al.* (2012) do; it is a basic requirement to gain a more nuanced picture of the land rush. In this article we have argued that in future work, researchers should pay more attention to acquiring detailed information on the status of land deals – information that is currently often vague or not available at all in compilations of land deals. Such information can contribute to a better understanding of the processes of land acquisition and the related behaviour of investors and other stakeholders. It is also potentially useful in interpreting contradictory data for a specific project. One of the major improvements to the re-launched Land Matrix database is the new option to provide information on each land deal’s ‘negotiation status’ (with six different categories for intended, concluded and failed deals) and ‘implementation status’ (four categories from ‘not started’ to ‘abandoned’) (Land Matrix 2014). While this differentiation is welcome, some of the categories such as ‘contract signed’ still provide wiggle room, as we have illustrated. The provided information still needs to be read with care and needs to be defined more specifically for each national context and each entry.

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<sup>16</sup> McCarthy *et al.* (2012, 523) define ‘virtual land grabbing’ as ‘situations where, behind a façade of land acquisition for a stated purpose, there lies an agenda to appropriate subsidies, obtain bank loans using land permits as collateral, or speculate on future increases in land values’. They further state that ‘[i]n the case of “virtual grabbing” only a few initial stages of land acquisition or enclosure processes occur; just sufficient to enable specific actors to pursue their own interests, which may or may not depend upon land use changes actually taking place’ (McCarthy *et al.* 2012, 523).

Further important information that is often missing in compilations of land deals is data on the earlier status of the land in question, in terms of property rights and usage. This is important if one wants to understand the decision-making process and the potential consequences at local level in a specific case. It is also crucial for gaining an overview of the patterns of land-use change induced by land acquisitions.

### ***Traceable references to (good quality) primary sources***

We propose a more rigorous documentation of data, which allows for the tracking of the primary sources of all the information given in compilations of land deals. Primary sources must be verified and checked for their quality, if possible. Traceable references to the sources are needed for every detailed entry in a list<sup>17</sup>. Though laborious and less user-friendly, this is the only way in which compilations can serve as appropriate databases that support further research and political and social responses.

The new version of the Land Matrix (2014) has considerably improved on the first version, by providing direct online links to the sources for information about each land deal in the database. However, contrary to what was announced by Anseeuw *et al.* (2013), the database does not provide the exact source for each single piece of information (i.e. the land size, the status of the land acquisition process, the investment purpose). Hence, while the database provides the possibility to retrace the sources for each entry, it places the responsibility of checking the data's quality on the user. The appropriate use of the database thus requires a well-educated and well-informed user, willing to invest a considerable amount of time. This is problematic, as many data users are inclined to make use of what is accessible without being able and/or willing to check the primary sources in each case. Therefore, it is crucial that the Land Matrix and other existing databases are constantly fed with data that are as reliable and accurate as possible. Further, database providers are responsible for publishing statements about the data's quality with the intention of making database users aware about important limitations, not just 'disclaimers [...] covering the authors' hindquarters' (Edelman 2013, 497).

### **Concluding remarks**

In sum, in this article, while acknowledging the challenges of representing a phenomenon as untransparent and dynamic as the global land rush, we propose a more specific, precise and rigorous way of collecting, presenting and reproducing data in order to improve the quality and detail of information. Our analysis, distinguishing between verified and unverified information and between announced, ongoing, concluded and ceased land deal processes, points out that the amount of unverified information is still considerable, the completion of announced and ongoing land deal processes is in many cases uncertain, and the relevance of domestic land investments is widely unknown. Academics and policymakers must realize that the knowledge about the land deal situation in Tanzania is still less clear than suggested by certain databases and needs further investigation. Improved research practices could help in representing the trend of large-scale land acquisitions more credibly and in using the resources of researchers and activists more effectively in order to tackle the urgent concerns related to the global land rush.

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<sup>17</sup> The compilation on land deals in Tanzania by Exner (2011, 131ff), though based on secondary information, is a good example regarding the exact provision of sources for detailed entries in a table.

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